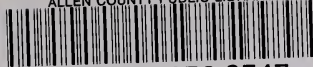


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THE

HISTORY OF MARYLAND,

FROM

ITS FIRST SETTLEMENT, IN 1633,

TO

THE RESTORATION, IN 1660,

WITH

A COPIOUS INTRODUCTION,

AND

NOTES AND ILLUSTRATIONS.

2 vol. in 1

BY JOHN LEEDS BOZMAN.

VOL. I.

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BALTIMORE:
JAMES LUCAS & E. K. DEEVER.
1837.

Entered according to the Act of Congress, in the year 1837, by James Lucas & E. K. Deaver,
in the Clerk's Office of the District Court of Maryland.

Lucas & Deaver, printers.

THE DONATION
OF THE
ORIGINAL MS. OF THE HISTORY OF MARYLAND

Was made to the State by

JOHN LEEDS KERR, Esq.

Of Talbot County, Md.

And accepted by the General Assembly, in the following Communication
and Resolutions:—

To THOMAS WRIGHT, Esq.,

Speaker of the House of Delegates of Maryland.

SIR,—I beg leave, through you, as the presiding officer of one branch of the General Assembly, to offer for its acceptance the autograph MS. of a History of Maryland, from its first settlement, in 1633, to the Restoration, in 1660, by John Leeds Bozman, deceased.

An introduction to a history of Maryland, written by my departed friend and relative, was published in the year eighteen hundred and eleven. The reasons which induced that publication, without the entire history itself, were assigned by the writer in his preface, and his design to complete the history at some future time was then intimated. He continued, for several years, with the utmost zeal to pursue this literary task,—to him a delightful occupation,—but, the rapid decline of his health defeated, in part, the object of his ardent ambition. Although his determination had been to bring his history down to the Revolution, in 1776, he felt himself admonished to close his task and stopped at the period of the Restoration, in 1660.

So far, this history, with numerous corrections and additions to the Introduction and an appendix of notes and illustrations, was accurately written out by the author himself, and prepared for the press—and would, altogether, comprise in print, about twelve hundred pages in octavo.

Such is a general description of this work. It is derived from the written memorials which then existed in the public archives of the State, from general history, annals and ancient journals, and all other pure sources, to which the anxious inqui-

ries and curious research of the writer could gain him access; and it comprises a history of the Province during the most interesting and eventful periods of its progress, through many difficulties and disasters, to a prosperous and regular government. Every intelligent and patriotic citizen will delight to trace therein the origin of many of our civil and political institutions, as well as the causes which first led to the emigration of our ancestors hither,—and he may, perhaps, feel a peculiar degree of gratification, in possessing this first essay to a regular history of the State, by a native citizen.

Of the learning or ability of the author, or of his qualifications for the execution of the task he assumed, it may not become me to say much, if any thing. To the scholar and the critic, as well as to the plain, sensible and patriotic reader, who can feel the utility and importance of a faithful history of his native country, the character of the work and the fame of its author must be alike submitted; and I feel assured that the most competent judges and those who best know the difficulties and labors of such an enterprise, will best appreciate the efforts and merits of the adventurer.

It would not seem very complimentary to the intelligence of the people of Maryland, at this time of day, to urge many statements in order to awaken their curiosity to the history of the first settlement of their ancestors and their early transactions here—and less so would it be towards their enlightened representatives who compose the General Assembly, to attempt to superadd inducements, to those which their own minds will suggest, to the attainment of an authentic history of any important period of our existence as a separate people here.

This gift to the State, if it be accepted, will not breed money for the treasury, nor will it, by a jot or tittle, elevate or depress the interests of any political party—but it will impart to the whole people a knowledge of their origin and of the by-gone fortunes and doings of their ancestors, and may inspire them with a more patriotic attachment to the land of their birth; whilst to me it will afford the most grateful recollection that the literary labors of a very dear departed friend—a native son of Maryland—have been justly appreciated by my fellow citizens.

I might, perhaps, with some exertions to obtain individual subscriptions and the ordinary patronage of the legislature, have made profit by the publication of this work—but, I prefer the

honor of its adoption by the State to any emolument that could be derived from invading the province of the bookseller.

Nevertheless, sir, there is one indispensable condition in this donation, even if it should be honored with an acceptance, to wit:—that it be printed and published within two years, at the latest, from this date, and that it be printed *correctly*; also that I have some assurance of a fulfilment of this condition precedent.

I desire very much to see the story of interesting incidents and events, and those valuable materials of history, which this MS. contains, preserved by a speedy multiplication of printed copies, against accident and the mouldering of time—to say nothing of any merit in the philosophical and political reflections by which they are connected together; and I could scarcely see, without mortification and regret, the cherished literary offspring of a friend mangled, as it might be, in the press, for want of the proper auspices.

The work described, will be left in the care of Thomas Culbreth, esqr., Clerk of the Council, for the inspection of any committee that either house of the Assembly may think proper to appoint.

I have the honor to be, sir,

Most respectfully,

Your obd't humble serv't,

JOHN LEEDS KERR.

Annapolis, Feb. 21, 1834.

Resolved, by the General Assembly of Maryland, that the donation offered by John Leeds Kerr, of Talbot county, of an Autograph Manuscript of “a history of Maryland, from its first settlement, in sixteen hundred and thirty-three, to the Restoration in sixteen hundred and sixty,” and of “corrections and additions” to an introduction to a history of Maryland, heretofore published, by John Leeds Bozman, deceased, together with a printed and corrected copy of the said Introduction, be and the same are hereby accepted, for and in behalf of the State.

Resolved, That the Governor and Council be, and they are hereby authorised and required, by contract, upon such terms as they may deem reasonable, to cause the said history and introduction, with the corrections and additions, notes and illustrations, to be correctly printed and published, in fair and good type and upon proper paper, in two volumes *octavo*, with an

index to the whole work, and so that the introduction, with the notes and illustrations, and that part of the manuscript which comprises the corrections and additions thereto, inserted in the proper places, according to the directions and references, shall form the first volume; and that the history, with its notes and illustrations, shall form the second volume; *Provided*, that five hundred copies of the work shall be reserved upon any such contract, for the use of the State, at such price as the said Governor and Council shall deem reasonable.

Resolved, That six copies of the said work, when so printed and published, be neatly bound and presented to the said donor.

THE
AUTHOR'S PREFACE
TO
THE INTRODUCTION,

Published in 1811.

“It will, perhaps, be expected by the public, that some reason should be assigned for publishing an *Introduction* to a history without the history itself. The author has to reply in explanation thereof, that his original intention was most certainly to complete the work he had undertaken. As this design of his has been of long standing, and numerous circumstances have intervened so as to interrupt his progress therein, it would afford but little amusement or satisfaction to the reader to peruse a rehearsal of them here in detail. It will be sufficient to mention, that whenever the author's occupation in life would permit his indulgence in any literary pursuit, that of history always presented to him the strongest attractions. But as it is natural for every man to feel an anxiety to know something of the transactions of his own neighbourhood, rather than of those abroad, so an acquaintance with the history of our native country is a more natural object of desire than that of distant nations. A native of the American States, will always feel an interest in the affairs of any one of them. But contracting the circle of his patriotic sensations to a smaller compass, he finds that the individual state, of which he is a citizen, nay indeed, the county and neighbourhood of his nativity, will more particularly claim both his affection and his attention. The citizen of Maryland, however, has hitherto in vain inquired for some information relative to the past transactions of his own individual state. While almost every other state in the Union has had its historian, Maryland, though one of the earliest British colonies, has never yet had even its first provincial transactions developed to the inquiring

reader. Under the influence of these sentiments, the author of this introduction, about six years past, undertook the task of examining the Provincial Records, at Annapolis, with a view of extracting from them the necessary materials for his design. He soon perceived, that the task of procuring these materials was a much more arduous one than he expected. It was impossible to compile and digest from voluminous books of records, scattered in different offices, where the author would be liable to constant interruptions, any historical work worthy of perusal. He perceived, that he must have either the original books themselves, or full copies of the documents which they contain, in his private apartment, before he could extract from them a recital or narrative of their contents. He takes pleasure, however, in this opportunity of expressing his acknowledgments of the polite attentions and readiness to oblige, which he received from the two gentlemen, who filled the offices of clerk of the council, and that of the late general court. But, formidable as the labour of copying was, the author would have readily encountered it, had it not become evident to him, that a residence at Annapolis for a year or two at least, would be necessary for the purpose. Of this his circumstances in life did not at that time permit. He retired, therefore, from his pursuit, with much reluctance, though still cherishing some hope, that it might at some future time be in his power, by a temporary residence at Annapolis, to complete the task he had assigned himself. Before this could be accomplished by him, he received information, that the gentleman, who has obliged the citizens of this State with a most useful work, "The Landholder's Assistant," had undertaken also, a history of the State of Maryland. As he has manifested much judgment and ability in the execution of the work already published by him, just mentioned, and as he has all the materials either under his own direction, (being register of the land office,) or near at hand to him, the public may expect to be amply gratified with his performance. Should, however, the gentleman just mentioned,* not have undertaken the work, or having undertaken it should have since relinquished it, the author of this volume would think himself authorised to pursue his original intentions.

It might not perhaps be improper in this place to suggest to the legislature of the State, or at least to those members of it

* Mr. Kilty, the gentleman here alluded to, died since this work has been in the printer's hands.

who may be competent judges of the utility and importance of a faithful history of their native country, that the written memorials of the State, whence only that history can be extracted, being comprised in a few MS. volumes, of which no duplicates exist, even should they fortunately escape an accidental destruction by fire, yet are constantly acted upon by the mouldering hand of time. The curious inquirer, who would wish to know something of the causes and origin of many of our political as well as civil institutions, may soon be told, that these reliques of the doings of our ancestors have been considered as useless rubbish, and no longer exist. Might it not, therefore, be suggested, that as the finances of the State are, as we are told, in a very prosperous situation, and the public have much money to spare, some judicious compiler should be employed to arrange and publish such documents remaining on our provincial or state records as would in any way be necessary to form materials for a faithful compilation of our history? A plan of this kind has already been executed with respect to the aggregate history of the several States of the Union, by Mr. Ebenezer Hazard, which, it seems, was undertaken at the instance of the legislature of the United States. One great excellence which the art of printing boasts over that of manuscript is the preservation of historical materials, by the multiplication of copies. If such a number only of the collection proposed was printed, as would be sufficient to deposite a copy in each of the several public offices of every county in the State, their preservation would be satisfactorily secured. Another advantageous result from this might possibly accrue. It is favourable to the cause of truth, that the materials of history should be accessible to all. Under free governments both the animosity of political parties, and the fanaticism or bigotry of religious sects are well known to be peculiarly prevalent. It is not enough, that the historian of such governments should have talents for declamation, and should have attained to celebrity in the senate or the forum. He should be one who has accustomed himself to view the scrambles of parties and the prejudices of sects "in the calm lights of mild philosophy." How has the once elevated character of Fox, the English Demosthenes, faded from its former lustre, by one little feeble historical effort—the emanation of party feelings, while that of the diffident and retired Hume rises daily in importance, and bids fair to be immortal. Besides, the same facts may present themselves to dif-

ferent writers in different points of view. One may state some circumstances attending a transaction, which throw much light on it, while others may omit the same, considering them as immaterial to the purpose. A variety of historians, therefore, contributes much to the preservation of historical truth. Thus a modern historian is enabled at this day to present to the world a more perfect history of Rome, than that of either Livy or Tacitus."

CONTENTS.

SECTION I.

The effects of Columbus's discoveries on the English nation—Commission to John Cabot and his three sons—John Cabot's death—Sebastian Cabot's voyage—Disputes between the courts of Portugal and Spain, in consequence of Columbus's discoveries—Portuguese discoveries—The Pope's partition—Cortereal's voyage—Patents for discovery and trade to some merchants of Bristol—Voyages and discoveries of the French—of the Spaniards—Ponce de Leon's discovery of Florida—Luke Vasquez's expedition—Verazzini's voyage—that of Stephen Gomez—English attempts for discovering a North-west passage—Pamphilo Narvez's Grant—Ferdinand de Soto's expedition—Cartier's—First attempts of the French to colonize Canada—English attempt to settle Newfoundland—La Roque's attempt to settle Canada—Further proceedings of the English—Fishery of Newfoundland—Pension granted to Sebastian Cabot, 9

SECTION II.

The reign of Elizabeth favorable to maritime adventures—Sir Humphrey Gilbert, the first conductor of an English colony to America—Letters Patent to him for that purpose—Characteristic incidents relative to Sir Humphrey Gilbert—his first voyage unsuccessful—sails a second time for America—takes possession of Newfoundland—is lost on his return to England, - - 41

SECTION III.

Sir Walter Raleigh—his rise and character—obtains a renewal of Sir Humphrey's letters patent to himself—Voyage of capt. Amidas and Barlow.—The effects of their voyage in England—Sir Richard Grenville's attempt to settle a colony in North Carolina, - - - - - 52

SECTION IV.

Attempts to relieve the first colony under governor Lane—A second colony at the same place under governor White—Sir Walter Raleigh assigns his patent—The whole of the second colony lost—Gosnold's voyage to New England—Sir Walter Raleigh's endeavours to find out the second colony at Roanoke—captain Pring's expedition—captain Bartholomew Gilbert's voyage—captain Weymouth's, - - - - - 67

SECTION V.

The progress of the French in settling colonies in America—A settlement of convicts on the Isle of Sables, by the French—Chauvin's voyages to the St. Lawrence—Pontgrave's voyage to the same—The Sieur de Mont's commission, and voyages under it—His patent revoked—Pontreincourt's endeavours to fix a settlement at Port Royal, Nova Scotia—The Sieur de Mont obtains a restoration of his grant—and establishes the first permanent colony in Canada, under the conduct of Champlain, - - - - - 83

SECTION VI.

A new association formed in England to colonize America—The letters patent commonly called the first charter of Virginia—Proceedings of the Plymouth Company under this charter—The king's instructions relative to both the colonies or companies to be formed under this charter—Proceedings of the first or South Virginia Company—The first colony sent out to South Virginia under Newport, and a permanent settlement formed at James' town, - 91

SECTION VII.

The distresses of the first Virginia colony, and the services of captain Smith—His first attempt to explore the bay of Chesapeake—His second attempt more successful—A general sketch of the tribes of Indians then inhabiting Virginia and Maryland—Smith becomes president of Virginia, and the tenor of some instructions from England to Virginia—An attempt of the Plymouth company to settle a colony in Maine—The second charter of Virginia, and the causes of granting it—The settlement of the Dutch at New York—English attempt to settle Newfoundland—The third charter of Virginia—Captain Argall's expedition to break up the French and Dutch settlements at Nova Scotia and New York, - - - - - 103

SECTION VIII.

Reasons for the following digression—Rise of the reformation—Its progress through the continent of Europe—Its introduction into England—The origin of the Puritans—Divisions among the Puritans—State of religious parties in England, on James I's accession—The independents emigrate to Holland—Their distressing situation there—They form the design of removing to America—Negotiate with the Virginia Company for that purpose—Dissensions in the Virginia Company occasion delay—They embark for America, and settle at Plymouth, in Massachusetts, - - - - - 194

SECTION IX.

Causes of the severe statutes against Roman Catholics in England, during the reign of Elizabeth—Their conduct on the accession of James I.—The cause of additional statutes against them—The excesses of the Catholics and Puritans give rise to political parties—First scheme of a colony of English Catholics in Newfoundland, under the patronage of Sir George Calvert—Sir George Calvert created lord Baltimore, visits Virginia, with further views of colonization—The conduct of the Virginians towards him—Differences among the Catholics with respect to the oaths of allegiance and supremacy—Lord Baltimore forms the scheme of settling a colony in Maryland—Settlement of a colony of Sweeds on the Delaware—The Virginians oppose the lord Baltimore's scheme—William Claybourne's claim—Lord Baltimore returns to England, and relinquishes his views of a settlement on Newfoundland—Obtains the promise of a grant of the province of Maryland, which is given on his death to his son Cecilius, - - - - - 222

INTRODUCTION

TO A

HISTORY OF MARYLAND.

SECTION I.

The effects of Columbus's discoveries on the English nation—Commission to John Cabot and his three sons—John Cabot's death—Sebastian Cabot's voyage—Disputes between the courts of Portugal and Spain, in consequence of Columbus's discoveries—Portuguese discoveries—The Pope's partition—Cortereal's voyage—Patents for discovery and trade to some merchants of Bristol—Voyages and discoveries of the French—of the Spaniards—Ponce de Leon's discovery of Florida—Luke Vasquez's expedition—Verazzini's voyage—that of Stephen Gomez—English attempts for discovering a North-west passage—Pamphilo Narvez's Grant—Ferdinand de Soto's expedition—Cartier's—First attempts of the French to colonize Canada—English attempt to settle Newfoundland—La Roque's attempt to settle Canada—Further proceedings of the English—Fishery of Newfoundland—Pension granted to Sebastian Cabot.

As Maryland was originally an English colony, to understand SECT. I.
fully the early part of its history, it is indispensably necessary 1492.
to be acquainted, in some measure, with those events which immediately led to its colonization. This will necessarily require not only a concise detail of such European attempts to form settlements in other parts of North America, as preceded that of Maryland in time, but also a short elucidation of the nature of those religious controversies in England, which produced the colonial settlements in New England and Maryland.

It is well known to every one tolerably acquainted with the history of America, that the first discovery of the West Indies, by Christopher Columbus, in 1492, filled all Europe with astonishment and admiration. This brilliant achievement of this renowned citizen of Genoa, under the patronage and auspices of Ferdinand and Isabella of Spain, cast such a lustre on their throne as to excite the envy of most of the monarchs of Europe.

SECT. I. It does, however, no small credit to the character of Henry VII.

1492. of England, their cotemporary, that he listened with a favourable ear to the application of Bartholomew Columbus, in behalf of his brother Christopher, prior to his grand undertaking. But Ferdinand and Isabella had anticipated him. To make some amends to his subjects, among whom this discovery had excited an uncommon spirit of adventure, Henry invited other seamen of known reputation, to enter into his service for similar purposes. It is remarkable, that at this period of time the English nation was much inferior to most other European nations in the science of navigation, though, from the advantages which its insular situation always gave, the contrary might have been expected. Its military glory retained its rank of equality with any; but the inconsiderate ambition of its monarchs had long wasted it on pernicious and ineffectual efforts to conquer France. In succession to which, the civil wars produced by the contest between the houses of York and Lancaster, had, as it were, preyed upon its bowels and exhausted its vigour. The city of Bristol, however, appears to have been inhabited at that time by some merchants of considerable enterprise and public spirit. Here, also, it seems, a certain Giovanni Gaboto, commonly called by the English, John Cabot, a native and citizen of Venice, had long resided. Desirous of emulating the exploits of Columbus, he offered himself to Henry as a person amply qualified to make further discoveries under the English banners. It is to be remembered, that the great object of Columbus, in his first voyage, was not to discover such a continent as that of America, but to explore a more convenient route to the East Indies, which were then supposed to form the grand fountain of all the wealth in the world. As the islands which Columbus discovered, were deemed by him a part of those Indies, and the reports of the vast quantities of gold and silver found among the natives of those islands had, without doubt, reached England, Henry, whose prevailing passion was avarice, was easily induced to listen to Cabot's proposals. He accordingly, by letters patent, bearing date the 5th of March, in the eleventh year of his reign, (in the year of Christ, 1496, according to *New Style*,*) "granted to John Cabot and his three sons, Louis, Sebastian, and Sancias, and their heirs, full power to navigate to any country or bay of the sea, east, west, or north, under his banners, with five ships,
1496. Commis-
sion to Jno.
Cabot and
his three
sons.

*See note (A) at the end of the volume.

of such burthen, and manned with as many men as they might choose, at their own cost and charges, to discover such islands, countries, regions, or provinces of any nation of infidels whatsoever, or wheresoever situated, which were then before unknown to any christian people; and as his vassals, governours, lieutenants, and deputies, to subjugate, occupy, and possess such countries or islands, as shall be discovered by them: so that nevertheless they should return to Bristol after every voyage, and that they should pay him a fifth part of the nett profits of such voyage; granting to them and their heirs, to be free from all customs on any goods or merchandize brought with them from such countries so discovered; and that no English subject whatever should frequent or visit such countries so discovered by them, without the license of the said John, his sons, or their heirs, or deputies, under the penalty of a forfeiture of their ships and goods; willing and strictly commanding all his subjects, as well by land as by sea, to be aiding and assisting to the said John and his sons and deputies, in arming and fitting out his ships, to be done at their own expense.*

SECT. I.
1496.

There are some circumstances necessary to be noticed here, which will plainly account for the delay which took place with the Cabots in availing themselves of the benefits of this patent. The restrictive clause in the letters, that the equipment of their expedition was "to be done at their own expense," so consonant to the parsimonious or frugal policy of the monarch who granted them, will readily suggest, that much difficulty might probably occur in the way of these enterprizing navigators, be-

*See this patent at large in the original Latin in Hazard's Collections, vol. 1, p. 9, and a translation of it in Chalmers' Annals, ch. 1, note 7. Chalmers has inserted it in his book, as he says, "because it is the most ancient American State-paper of England." It may be proper also to take notice here of what is alleged in Harris' collection of Voyages, (ed. 1748, vol. 2, p. 190,) that "the year before this patent was granted, John Cabot, with his son Sebastian, had sailed from Bristol upon discovery, and had actually seen the continent of Newfoundland, to which they gave the name of *Prima Vista*, or *First Seen*; and upon the report made by them of this voyage, the before mentioned patent was granted." But as I do not find this circumstance recognized by any historian, except in the obscure assertion made by the authors of the Mod. Univ. Hist., vol. 44, p. 2, "that Sebastian Cabot was sent by Henry VII. a year before the discovery of Columbus, and, having first discovered Newfoundland, sailed along the coast as far as Florida;" which certainly being without foundation as to time at least, if not extent, I have not thought it proper to be inserted in the text. It is possible, however, that those authors might have meant, that Cabot was sent a year before Columbus discovered the continent in his third voyage. If so, it is some corroboration of what is said in Harris.

SECT. I. fore they would be able to procure the means of preparing such
 1496. equipment out of their own finances. 'This consideration necessarily leads to point out the real cause of a subsequent grant or
 1498. license by the same king, on the 3d of February, 13 Hen. VII. (nearly two years after their first patent,) whereby he authorised John Cabot "to seize upon six English ships,* in any port or ports of the realm of England, of 200 tons burthen, or under, with their requisite apparatus," &c. Before the license hereby granted could be carried into effect, John Cabot died.† But Sebastian, his son, making application to the king, and proposing to discover a north west passage to the Indies, the grand desideratum of those days, the ruling passion of the king was touched, and he ordered a ship to be manned and victualled for him at Bristol at the royal expense. Some merchants also of that city fitted out for him, at their own charges, three or four other ships. With this little fleet, Sebastian was now ready to undertake his long projected voyage. He accordingly, in May, 1498,‡ embarked at Bristol for that purpose. Animated by the example of Columbus, he had adopted the system of that great man, concerning the probability of opening a new and shorter passage to the East Indies, by holding a western course. He accordingly deemed it probable, that by steering to the north west, he might reach India by a shorter course than that which Columbus had taken. After sailing for some weeks due west, and nearly in the parallel of, the port from which he took his departure, he discovered a large island, which he called *Prima Vista* (First Seen,) and his sailors (being Englishmen) *New-foundland*; and in a few days he descried a smaller isle, to which he gave the name of St. John's. He landed on both these, made some observations on their soil and productions, and brought off three of the natives. Continuing his course westward, he soon reached the continent of North America, and sailed along it from thence to the thirty-eighth degree of latitude. Their provisions now failing, and a mutiny breaking out among the mariners, they returned to England, without attempt-

John Cabot's death

Sebastian Cabot's voyage.

* The words are, "quod ipse capere possit," &c. See it at large in Hazard's Collections, vol. 1, p. 10.

† Harris' Voyages, vol. 2, p. 190.

‡ Mod. Univ. Hist., vol. 44, p. 60. Hume's Hist. of England, at the end of Hen. 7th's reign. Other historians place his voyage in 1497; but see note (A) at the end of this volume.

ing either settlement or conquest in any part of this continent.*

SECT. I.

1498.

It may be proper here to observe, that although Columbus might not have actually been the first discoverer of the *continent* of America, yet as he was unquestionably the first discoverer of those islands, now denominated the West Indies, and the first navigator who had the fortitude to cross the Atlantic, he is certainly entitled to all the merit of the first discovery of the continent. For the discovery of the continent, after that of those islands, must, in the nature of things, have been in a short time a necessary consequence. All historians seem to agree, that he first discovered that part of the continent of South America adjacent to the island of Trinidad, on the first of August, 1498, in his third voyage. Supposing the first discovery of the continent of North America by Sebastian Cabot was, as before mentioned, in the same year, to wit, 1498, he probably fell in with the continent only a month or two before Columbus did. Each navigator, however, appears to have been distinct from, and unconnected with the other; and therefore, each entitled to their respective merits, with this manifest exception, that Cabot would never, in all probability, have been sent out on his voyage, had not the fame of Columbus' sprior discoveries led the way.

Nor is it easy to deprive the Portuguese nation of a considerable share of merit, which they have just pretences to, in clearing the road, as it were, to the discovery of America. Their indefatigable industry in exploring the coast of Africa during the fifteenth century, in order to get to the East Indies, undoubtedly induced Columbus to think of his western route. And the accidental discovery of Brazil in the last year of that century, by Pedro Alvarez Cabral, demonstrates, that in the course of a few succeeding years, chance would have thrown on that commander and the Portuguese nation, all the honour and fame which Columbus acquired by his own personal sagacity.†

Portuguese
discoveries.

* If the reader should be a native of Maryland, and one of those who place confidence in a right resulting from prior discovery, he will be gratified by the strong probability there is, that Cabot in this voyage first saw and discovered that part of the State of Maryland, bordering on the Atlantic Ocean. If he sailed along the coast from the northward to the 38th degree of latitude, (which is at or near the divisional line between Virginia and Maryland,) he must have had a view of Fenwick's and Assatiegue islands, and possibly looked into Sinepuxent or Chinigoteague inlets.

† Harris' Voyages, vol. 1, p. 666. Robertson's Hist. of America, vol. 1, p. 214.

SECT. I.

1498.

Dispute
between
the courts
of Portugal
and Spain,
in conse-
quence of
Columbus'
discoveries

The pope's
partition.

Immediately on the return of Columbus from his first voyage, in 1492, the Portuguese, who had discovered and possessed the Azores, claimed also, in virtue thereof, as well as by a former grant of the pope,* all such newly discovered islands and countries as had been visited by Columbus. Their catholic majesties, by the advice of Columbus, applied to the pope to obtain his sanction of their claims, and his consent for the conquest of the West Indies. The Spanish queen being a niece of the king of Portugal, he was induced to agree to a reference of their dispute to the pope. The pope then in the chair, was Alexander VI., a Spaniard by birth, and from this circumstance as well as the general depravity of his character, was not perhaps so impartial a judge as might be wished. Readily acceding to the proposal, he, by a bull, bearing date the third of May, 1493, made the celebrated line of partition, whereby he granted to their catholic majesties, all the islands and countries already discovered, or to be discovered, which should lie westward of a line drawn from the north to the south pole, at the distance of one hundred leagues westward of the Azores and Cape de Verd Islands, and which had not been actually possessed by any christian king or prince, on or before the first day of the same year 1493.† Although the king of Portu-

* This bull of the pope was made in 1444, through the intercession of prince Henry of Portugal, so celebrated for promoting the Portuguese discoveries along the coast of Africa. The tenor of this grant of the pope to the crown of Portugal, was an exclusive right to all the countries which the Portuguese should discover, from cape *Non*, on the coast of Africa, to the continent of India. Harris' Voyages, vol. 1, p. 664. Mod. Univ. Hist., vol. 9, p. 246. Robertson's Hist. of America, vol. 1, p. 69. It is said by Chalmers (in his Annals, ch. 1, note 19,) that—"Pope Nicholas V. in January, 1454, granted to Alphonsus, king of Portugal, and to the infant Henry, the empire of Guinea, with authority to subdue it; and he at the same time prohibited all persons from sailing thither, without their permission;" for which he cites "the bull in Leibnitii codex juris gent. diplomat. p. 165." But, as Robertson (*ibid.*) seems positive in ascribing the original grant to prince Henry to have been by the pontiff Eugene IV. and the date affixed to it (Anno 1444,) in Harris' Voyages and in the Mod. Univ. Hist. (*ibid.*) corresponds thereto, wherein it is also said, that Nicholas V. and Sixtus IV. confirmed the original grant to Henry, it appears that the grant, alluded to by Chalmers, was in the nature of a deed of confirmation, supposed to be necessary as the Portuguese advanced in their discoveries.

† See this bull at large, in the original Latin, in Hazard's Collections, vol. 1, p. 3. The curiosity of a free American citizen of the United States, may perhaps be excited to a desire to know a little of the character of a man, who once had the power of making a grant of the land they live in. He is thus spoken of by *Guicciardini*, an Italian historian of great estimation:—"In his manners he was most shameless; wholly divested of sincerity, of decency, and of truth; without fidelity; without religion; in his avarice, immoderate; in his ambition, insatiable; in his cruelty, more than barbarous; with a most ardent desire of

gal had agreed to the reference, he was dissatisfied with this partition. The subject was, therefore, referred again to six plenipotentiaries, three chosen from each nation, whose conferences issued in an agreement, that the line of partition, in the pope's bull, should be extended two hundred and seventy leagues further to the west; that all westward of that line should fall to the share of the Spaniards; and all eastward of it to the Portuguese: but that the subjects of their catholic majesties might freely sail through those seas belonging to the king of Portugal, holding through the same a direct course.*

SECT. 1.

1498.

Notwithstanding this apparent reconciliation between the two contending nations, and their modest compromise for half the world, the Portuguese, having reluctantly agreed to it, did not continue in that respect for the pope's grant, or the partial confirmation of it by the before mentioned referees, so long as might have been expected from the religious bigotry of that nation.† In the year 1500, one Caspar de Cortereal, a Portuguese of respectable family, inspired with the resolution of discovering new countries, and a new route to India, and probably under the influence of the jealousy of his nation as to the Spanish encroachments, and in spite of the donation of the pope, sailed from Lisbon, with two vessels, at his own cost. In the course of his navigation he arrived at Newfoundland, at a bay, which he named Conception bay; explored the whole eastern coast of the island, and proceeded to the mouth of the great river of Canada, the St. Lawrence. He afterwards discovered a land, which he first named Terra Verde, but which, in remembrance of the discoverer, was afterwards called Terra de Cortereal. That part of it, which being

1500.

Cortereal's
voyage.

exalting his numerous children, by whatever means it might be accomplished; some of whom were not less detestable than their father." See Roscoe's Pontificate of Leo X. vol. 1, p. 196. It cannot be asserted, however, that this pope Alexander was a worse man than Henry the eighth of England, the great royal reformer. What ornaments to christianity are such characters!

* This agreement was made the 7th of June, 1493. It was sealed by the king of Spain, 2d of July same year; and by the king of Portugal on the 27th of February, 1494. Mod. Univ. History, vol. 9, p. 385-6. Holmes' American Annals, vol. 1, p. 9.

† It should be remembered, however, that some of the causes which have obstructed the cultivation of science in Portugal during the seventeenth and eighteenth centuries, did not exist in the fifteenth century. The court of inquisition, which effectually checks a spirit of liberal inquiry and of literary improvement, where it is established, was unknown in Portugal in the fifteenth century, when the people of that kingdom began their voyages of discovery. It was not introduced there until about the year 1525, in the reign of John III.—Robertson's Hist. of America, vol. 1, p. 59. Mod. Univ. Hist. vol. xxii. p. 227.

SECT. I. on the south side of the fiftieth degree of north latitude, he judged
 1500. ed to be fit for cultivation, he named Terra de Labrador. Returning, and communicating the news of his discovery to his native country, he hastened back to visit the coast of Labrador, and to go to India through the straits of Anian, which he imagined he had just discovered. Nothing, however, was afterwards heard of him. It is presumed, that he was either murdered by the Esquimaux savages, or perished among the ice. On this disastrous event, a brother of Cortereal undertook the same voyage; most probably in search of his brother: but he is supposed to have met with a similar fate, for he was heard of no more.* Although these voyages were undertaken by individuals, and not by the royal authority of Portugal, yet as these expeditions seem to have been fitted out openly, and probably must have come to the knowledge of the sovereign power of the Portuguese nation, and were not prohibited by them, they may therefore be considered as a national transgression of the interdicted limits prescribed by the pope. This short notice of them seemed necessary to be made, in order to illustrate more fully the early discoveries of the northern parts of the continent of America.

1502. Patents for discovery and trade, to some merchants of Bristol. In England also, as little regard seems to have been paid to this celebrated papal partition, although that country was still under the ecclesiastical power of the Roman pontiff. Some schemes of further discovery and commercial enterprise having been formed about this time by some merchants of Bristol, in conjunction with some Portuguese gentlemen, patents for that purpose were granted to them by Henry VII., in the sixteenth and eighteenth years of his reign, without noticing the before

* Holmes' American Annals, vol. 1, p. 25. Holmes cites, among the authorities for the foregoing account, Harris' Voyages, vol. 1, p. 270. After a careful search through both volumes of that work, I have not been able to find any of the above particulars relative to Cortereal's voyage; but as it appears from Holmes' Index of Authors cited by him in the course of his work, printed at the end of his second volume, that he used the edition of Harris' Voyages published in 1705, and the one here used is of the edition published in the years 1744 and 1748; it is possible that this voyage might have been designedly omitted in this last or second edition of that work. In vol. 2, p. 401, (edit. 1748,) where the north west passage is treated of, there is this short remark, "One Cortereal, a Portuguese, is also said to have passed this strait, and to have bestowed upon it his name; but how, when, or where, is not to be inquired, or at least to be resolved." The authors of the Modern Universal History, in many parts of their work, particularly in vol. 11, p. 364, pass high encomiums on this last edition of Harris' Collection of Voyages, though they do not mention the editor's name except by description, as "the sensible author of the Present State of Europe."

mentioned line of division.* But these grants do not appear to have ever been productive of any effect; for which, some probable reasons may be suggested. Henry was then engaged in a war with Scotland, and an insurrection in his own kingdom. He was also about forming an alliance with Ferdinand and Isabella of Spain, by the marriage of his son to their daughter, which might induce him to discountenance undertakings necessarily disagreeable to them. To which may be added also, that agreeably to the characteristic genius of Henry, he was not so liberal as to give one penny towards the enterprise. Nothing further appears to have been done by the English nation, in pursuance of Cabot's discoveries, during the remainder of his reign.

Amidst the enthusiasm excited in Europe by the discovery of America, it was not to be expected that so great a nation as the French would remain totally inactive. It is said, indeed, that they pretend to a more early discovery of the northern part of America, than that of the English under Cabot. Though this appears to have but a slender foundation, yet it seems to be very well authenticated, that as early as the year 1504, some adventurous navigators from Biscay, Bretagne, and Normandy, in France, came in small vessels to fish on the banks of Newfoundland. They are alleged to be the first French vessels that appeared on the coasts of North America; and from their own account, their fishermen are said to have discovered at this time the grand bank of Newfoundland. In a year or two afterwards, (1506,) *Jean Denys*, a native of Rouen, sailed from Harfleur to Newfoundland, and published, on his return, a map of the gulf of St. Lawrence, and of the coast of the adjacent country. Also, in 1508, *Thomas Aubert*, in a ship belonging to his father, *Jean Ango*, Viscount of Dieppe, made a voyage from thence to Newfoundland; and proceeding thence to the river St. Lawrence, is said to be the first who sailed up that great river to the country of Canada, and on his return carried to Paris some of the natives.†

The same causes operating on the conduct of Henry VIII. for

* See the later patent at large in Hazard's Collections, vol. 1, p. 11, in which recital is made of the prior one, dated May 19th, 16 Hen. VII. In each of these patents a clause of denization was inserted to the three Portuguese gentlemen concerned, in order to prevent them from being considered as foreign merchants, liable to duties and disadvantages in trade from which English subjects were exempt.

† Mod. Univ. Hist., vol. 39, p. 406. Holmes' Annals, vol. 1, p. 33, 35, 37

SECT. I. the first three or four years of his reign, as in that of his father,
 1508. they would naturally in like manner paralyze any efforts on the part of the English nation in pursuance of Cabot's discoveries. In the mean time, however, the Spaniards were going on rapidly in their discoveries and conquests in the islands and southern part of America. One incident of which, it may not, perhaps, be unnecessary to mention, as it bears some relation to our present inquiries:—a certain Juan Ponce de Leon, being an officer of some note in the island of Hispaniola, shortly after the conquest and settlement of that island, had obtained leave to conquer the neighbouring island called Porto Rico. After performing this, he was for some cause displaced from his office of governor thereof. But, having thereby acquired considerable wealth, he was enabled to fit out some vessels at his own expense for further discoveries. He was induced to this, not only by that chivalrous spirit of adventure, which appears to have been then among the Spaniards, the fashion of the times; but also, as it is said, to gratify a romantic curiosity, in ascertaining the truth of a traditional report, which had long existed among the aborigines of the island, relative to the extraordinary virtues of a certain river, rivulet, or fountain in the island of *Bimini*, one of the *Lucayos*, which had the property of renovating those who bathed in its waters, into their former youth and vigour. Whatever the motives of his voyage might have been, it seems, that in pursuance of his schemes, he fell upon that part of the coast of North America called by him Florida, and which has ever since retained that name.* But it does not appear that he explored that coast more northerly than the river formerly called *St. Mattheo*, now *St. Juan's* or *St. John's*, in East Florida, and which is a little to the southward of what is now the boundary line between the United States and the Spanish territories.†

1512.
 Ponce de
 Leon's dis-
 covery of
 Florida.

The reader will perceive, that at this period of time, (1512,) even after Ponce de Leon's voyage, there remained a vast space of the continent of North America along the Atlantic, (from the 30th to the 38th degree of north latitude, from Florida to the most southern part of the coast of Maryland,) which had never been visited by any European. Although the English court long afterwards, both at the time of granting the patent for Carolina, in 1663, and of their claim to Florida in 1762, pretended

* Called so because it was first discovered by the Spaniards on Easter day, which they call *Pasqua Florida*. *Mod. Univ. Hist.*, vol. 39, p. 123, and vol. 44, p. 41.

† *Harris' Voyages*, vol. 2, p. 57.

that Cabot's discoveries included both Carolina and Florida, by SECT. I. which, through right of prior discovery, they claimed to the gulf of Mexico,* yet as no authentic history can be found to show that Cabot ever descended so far to the south,† or indeed any lower than the 38th degree of north latitude, that right must remain unsupported, unless the discovery of a part of the continent of North America could be construed as giving right to the whole of it. But in such an extensive continent as this, such a right must appear at once futile and vain, and *the right of prior occupation*, or settlement, seems in such case to be the only rational right to be relied on. ‡

The Spaniards did not, however, altogether neglect this discovery of *Ponce de Leon*. Being in want of labourers to work their mines in St. Domingo, they formed the project of kidnapping the natives on this coast for that purpose. Accordingly in the year 1520, two ships were fitted out from St. Domingo, under the command of a Spaniard whose name was Luke Vasquez. He proceeded to that part of the continent of North America which was then supposed by the Spaniards to be a part of Ponce de Leon's discoveries, and as denominated by him Florida: but the place at which Vasquez arrived, was, it seems, that now called St. Helena, a small island at the mouth of Port Royal harbour, in the southern part of South Carolina, in about 32° 15' north latitude. The natives, it is said, seeing his ships as they drew near the land, with expanded sails, never having seen the like before, took them for two monstrous fishes driving towards the shore, and ran in crowds to view them; but on a nearer view of the Spaniards, after they had landed, these simple natives were so struck with their clothing and appearance, that they fled with the greatest marks of consternation. Two of them, however, were taken; and the Spaniards carrying them on board, gave them victuals and drink, and sent them back on shore clothed in Spanish dresses. This insidious kindness had its desired effect with the unsuspecting savages. The king of the country admired the Spanish dresses and hospitality so much, that he sent fifty of his subjects to the ships with fruits

1512.

1520.

Luke Vasquez's expedition.

* Mod. Univ. Hist., vol. 40, p. 419. Oldmixon's British Empire in America, vol. 1, p. 325.

† This assertion I find made by Oldmixon in the place just above cited from him, and as it seems to be well founded, it is here adopted. But see a further discussion of this subject in note (B) at the end of this volume.

‡ See note (C) at the end of the volume.

SECT. I. and provisions; ordered his people to attend the Spaniards, 1520. wherever they had a mind to visit the country, and made them rich presents of gold, plates of silver, and pearls. The Spaniards, having learned all they could concerning the country, watered and re-victualled their ships, and inviting a large number of their generous landlords on board, after plying them with liquor, they weighed anchor and sailed off with them. This scheme, however, had not all the success its perpetrators expected. Most of the unhappy savages either pined themselves to death, or were lost in one of the ships that foundered at sea; so that only a very few survived for the purposes of slavery. Vaquez, notwithstanding his loss, having acquired some reputation from the expedition, renewed, in the years 1524 and 1525, his attempts to carry on a slave trade from that part of the continent. But, one of his ships being wrecked near St. Helena, and two hundred of his men being cut off by the natives, he was so discouraged, that he returned to Hispaniola and died, it is said, of a broken heart.*

1524. Some schemes for discovery and settlement in America, appear to have been now again revived in France. After a lapse of about fifteen years from the expedition of Aubert to Canada, Verazzini's voyage. in 1508, before mentioned, and the accession of Francis the first to the throne of France, that excellent monarch, the restorer of letters, (as he is styled by some French writers,) with the honorable ambition natural to great minds, resolved to partake in the glory of other European monarchs in making discoveries in America. With this view he fitted out in the year 1523, Giovanni (or John) Verazzini, a Florentine,† to prosecute discoveries "in the northern parts" of America. History has recorded but little worth mentioning of any of the three several and successive expeditions undertaken by him, except the considerable ex-

*Mod. Univ. His. vol. 40, p. 379.

† Although what is published in Hakluyt's *Voyages* purports to be—"The relation of *John De Verazzano*, a Florentine," &c, yet I have ventured to alter the orthography of his name to *Verazzini*, upon the authority of Roscoe in his *Pontificate of Leo Xth*. It is most probable that Hakluyt obtained a copy of Verazzani's letter to the French king from some French publication; and the title prefixed to the letter, to wit: "The relation of *John De Verrazzano*, a Florentine," &c., is evidently not a part of Verazzini's letter, but a title or head of the paper prefixed to it by some French or English editor. Few Englishmen have made themselves so well acquainted with the Italian language as Roscoe. His mode of writing the name, Verazzini, may be therefore followed with greater safety. It may be observed, moreover, that Italian names have not commonly the preposition *De* prefixed to the surname.

tent of his *second* voyage, or that made by him in 1524, which was along the coast of North America. His discoveries are said to have laid the foundation of the French claims to a considerable part of the continent of North America,* and this his second voyage has therefore become an object of notice. The knowledge we have of it, is altogether derived from his own letter to the French king, which appears to have been written immediately on his return from that voyage to Dieppe, and bears date "the eighth of July, 1524." As much of his letter is occupied in remarks on the behaviour and appearances of the different savages he met with on the coast, with but an obscure description of some places he touched at, seldom mentioning the latitudes of those places, his "Relation" has become for the most part, but the subject of conjecture, and different writers have drawn different inferences concerning its topography. His own words, in the most material passages of his letter are therefore here preferred.—"The 17 of January, the yeare 1524† by the grace of God, we departed from the dishabited rocks by the isle of Madeira, appertaining to the king of Portugal, with 50 men, with victuals, weapons, and other ship munition very well provided and furnished for eight months; and sailing westward with a faire easterly winde, in 25 days we ran 500 leagues, and 20 of Februerie, we were ouertaken with as sharpe and terrible a tempest as euer any saylers suffered, whereof with the diuine helpe and merciful assistance of Almighty God, and the goodnesse of our shippe, accompanied with the good happe of her fortunate name,* we were de-

* Williamson's Hist. of North Carolina, vol. 1, p. 15. The inference may be drawn also from Charlevoix's Hist. Nouv. France, as cited in Holmes' Annals, *sub anno*, 1524.

† As the letter was evidently written *after* his voyage, and bears date as above mentioned, July 8th, 1524, it follows that January, 1524, was in the first part of that year, and not in the latter part of it agreeably to Old Style in England.

* Her name, as he mentions it in the first paragraph of his letter which preceded what is above, was "the *Dolphin*." Dr. Miller, in his discourse before the New York Historical Society, on the 4th of September, 1809, (published in the first volume of the collections of that society,) has called this vessel "the *Dauphin*." It is true, that by old English writers the *Dauphin* of France, (the heir apparent,) was often written the *Dolphin* of France; but as the word *Dolphin* in English signifies a particular species of fish, and a name of that origin is often appropriated to sea vessels, might not "the good happe of her fortunate name," allude to her similitude to that species of fish in her excellent qualities in her natural element, the sea? It may be added, that the title of *Dauphin* given to the oldest son of the king of France, is said by some, to have originated from one of those princes bearing a figure of the fish called a *Dauphin* in his coat of arms; and the word *Dauphin* in French signifies the sea-fish called a Dolphin, as well as the oldest son above mentioned.

SECT. I. 1524. lived, and with a prosperous winde followed our course west and by north. And in other 25 dayes we made above 400 leagues more, where we discouered a new lande, neuer before seene of any man either ancienne or moderne, and at the first sight it seemed somewhat low, but being within a quarter of a league of it, we perceived by the great fires that we saw by the sea-coast, that it was inhabited, and saw that the land stretched to the southwards." It may be here remarked, that Verazzini thus far gives no certain *data*, from which it may be ascertained with any tolerable precision at what part of the American continent this "new lande," thus discovered by him, was situated. Forster (in his Collection of Voyages,*) supposes that "it was that part of the American coast, where the town of Savannah now stands;" which is in about 32° of north latitude. Williamson, in his history of North Carolina, says, "He touched the continent near the thirtieth degree of north latitude, and called the country Mocosa, taking possession of it in the name of the king of France."† Dr. Miller, in his discourse before cited, says:—"About the middle of March he arrived on the American coast, in latitude 34° north; of consequence near that part of North Carolina on which Wilmington now stands." But not one of the assertions are clearly warranted by Verazzini's letter. It is true, that Verazzini, further along in his letter, says—"This land is in latitude 34° ." But he here refers to land seen by him after he had traversed "fifty leagues" of the coast, and not the "new lande" first seen by him. It must be acknowledged, however, that circumstances corroborate Dr. Miller's conjecture. The place of Verazzini's departure, (one of the *Desertas* contiguous to Madeira,) lies in about $31^{\circ} 30'$ north latitude. For the first twenty-five days he appears to have run a due *west* course, "with a faire easterly winde," (the trade winds) 500 leagues; which we may suppose to have been somewhat more than half the distance across the atlantic; during which run he most probably

* See Holmes' Annals, vol. 1, p. 68.

† Williamson's Hist. of N. Carolina, vol. 1, p. 15. Although this historian is judicious enough in his remarks, yet, agreeably to the fashion of many American historians, he never deigns to cite any authorities for the facts set forth by him. Verazzini's letter to the French king, containing the "relation" of his voyage in 1524, makes no mention of any country called Mocosa, nor of his touching at the thirtieth degree of latitude. The author must have derived these facts from some other source.

kept in the same parallel of latitude as the place of his departure near Madeira. He then goes on to say, (after mentioning their "delivery from the terrible tempest,")—"and with a prosperous winde followed our course *west and by north*. And in other 25 dayes we made about 400 leagues more, where we discovered a new lande," &c. Having altered his course in the last 25 days, to *west and by north*, with a prosperous wind, he must necessarily have made some *nothing* in his run for the last 25 days, especially when we take in also the well known effect of the gulf stream in setting all vessels near the coast to the northward. So that about three or four degrees would be as small an allowance as could be admitted; which would make the "new lande" first seen by him to have been in about 34° of north latitude, as Dr. Miller supposes; the line of which intersects the small island lying between *Shoal* and *Cabbage* inlets on the coast of North Carolina. "In seeking some convenient harborough, wherein to anchor, and to have knowledge of the place, we sayled *fiftie leagues* in vaine, and seeing the lande to runne still to the southwards,* we resolved to return backe againe towards the north, where we found ourselves troubled with the like difficultie. At length, being in dispaire to find any porte, we cast anchor upon the coast and sent our boat to shore, where we saw great store of people which came to the sea side." Verazzini then proceeds to give a description of the conduct, manners, dress and appearance of the natives, none of which is very interesting to us at this day. Passing that over we may proceed to the next part of his letter, which throws any light upon the location of the coast, where he was at anchor. "We could not learn of this people their manner of living, nor their particular customs, by reason of the short abode we made on the shore, our company being but small, and our ship ryding farre off in the sea. And *not farre from these* we found another people,† whose living we think to be like unto theirs (as hereafter I will declare unto your majestie) shewing at this present the situation and

SECT. I.

1524.

*English and French *marine* leagues being the same, "fifty leagues," as above mentioned, measured from 34° north latitude "to the southwards," would bring the voyagers down to the southern coast of South Carolina, somewhere between Port Royal harbor and Savannah sound.—See a scale of British and French sea leagues in Hitchin's "Map of the British dominions in America, according to the treaty of 1763."

†It would appear from this, that he now moved farther towards the north from where he anchored and sent the boat ashore; but, as he says "not farre," a few miles may satisfy the expression.

SECT. I. nature of the foresayed land. The shoare is all covered with
 1524. small sand, and so ascendeth upwards for the space of 15 foote, rising in form of little hills, about 50 paces broad. And sayling forwards,* we found certaine small rivers and armes of the sea, that fall down by certaine creeks, washing the shoare on both sides as the coast lyeth. And beyond this we saw the open country rising in heighth above the sandy shoare, with many faire fields and plaines, full of mightie great woods, some very thick, and some thinne, replenishing with divers sorts of trees as pleasant and delectable to behold, as is possible to imagine. And your Majestie may not thinke, that these are like the woods of *Hercynia* or the wilde deserts of *Tartary*, and the northern coasts, full of fruitlesse trees: but they are full of *palme* trees, bey trees, and high cypresse trees, and many other sorts of trees unknown in Europe," &c. "This land is in latitude 34° ," &c. Although Verazzini apparently expresses himself, as if he meant that the woods or land, where he found *palm* trees, was in 34° north latitude, yet Dr. Miller (in his discourse before quoted) seems to think, that the palm trees mentioned by him, must have been seen "in the southern part of what is now the State of Georgia, to the north of which the palm tree is not found." But may we not hazard a conjecture, that what Verazzini calls the palm tree was what is called the *Cabbage* tree (the *Corypha* of Linneus) according to Mr. William Bartram, whose description of this tree is inserted in Dr. Mease's edition of Willich's Domestic Encyclopedia. Mr. Bartram says, "it is a tall and beautiful species of *palm* tree, which grows on the sea coast of Carolina, Georgia and Florida. Its stem, or trunk, is erect, and rises 80 or 90 feet. There are six species of the *palm* Carolina and Florida." This seems to establish the fact, that the Cabbage tree was the same tree mentioned by Verazzini under the denomination of the "*palm* tree," which evidently growing in South Carolina takes away the necessity of his descending to the latitude of the southern part of Georgia. It is possible also, that, as the latitude of 34° is but a little to the north of South Carolina, the cabbage or palm tree might have been found in that part of North Carolina, at the time of Verazzini's voyage, before any European had

*This indicates also, that he kept his progress gradually to the north from the place where he last anchored.

come to destroy the timber trees of the country. "*We depart- ed from this place*, still running along the coast, which we found to *trend toward the east*, and we saw every where very great fires, by reason of the multitude of the inhabitants. While we rode on that coast, partly because it had no harborough, and for that we wanted water, we sent our boat ashore with 25 men." Here, by reason of the surf, they could not land, but a young man of the crew, attempting to swim to the shore, was taken by the Indians, treated very civilly, and permitted to swim back to the boat. Supposing the harbor hereafter described by Verazzini, to be that of New York, and counting back or measuring the number of leagues mentioned by him, and attending also to the trending of the coast "*toward the east*," as just mentioned, it will raise a strong presumption that the place where this incident occurred, was on Cove bank between Ocracocke inlet and Cape Look Out. It seems surprising, therefore, that Mr. Forster, in his collection of Voyages,* should suppose it to have happened "somewhere about New Jersey or Staten Island." "Departing from hence, following the shore which *trended somewhat to the north*," (after passing Cape Hatteras,) "*in 50 leagues space we came to another land which shewed much more faire and full of woods, being very great, where we rode at anker; and that we might have some knowledge thereof, we sent 20 men aland, which entered into the country about two leagues, and they found that the people were fled to the woods for feare.*" If the next station, after a run of one hundred leagues, be the harbour of New York, as it will appear to be when we arrive at that part of Verazzini's "Relation," the end of "*the fifty leagues space*," here spoken of, would be a little to the north of Currituck inlet, and on the sea coast of Princess Ann county in Virginia. Nothing in Verazzini's description of that part of the country contradicts this supposition. "Having made our abode three days in this country, and ryding on the coast for want of harboroughs, we concluded to depart from thence trending along the shore between the north and the east,† sayling only in the day time, and ryding at anker by night. *In the space of one hundred leagues sayling we found a very pleasant place situated among certain*

*See Holmes' Annals, vol. 1, page 66.

†It will readily be perceived, on an inspection of a map of the United States, that the coast from Cape Hatteras to the mouth of the Chesapeake, is nearly north, and from thence to Sandy Hook, near New York, north east, corresponding in a rough estimation, with the courses and distances abovementioned.

SECT. I. little steape hils ; from amidst the which hils there ranne down
 1524. into the sea an exceeding great streame of water, which within the mouth was very deepe, and from the sea to the mouth of the same with the tide, which we found to rise 8 foote, any great ship laden may passe up. But, because we rode at anker in a place, well fenced from the winde, we would not venture ourselves without knowledge of the place, and we passed up with our boats only into the said river, and saw the country very well peopled." "We entered up the said river into the land about half a league, where it made a most pleasant lake about 3 leagues in compasse, on the which they rowed from the one side to the other, to the number of 30 of their small boats, wherein were many people which passed from one shore to the other to come and see us." From the foregoing description of this harbour, "among certaine little steape hils," and in form "a lake about 3 leagues in compass," we may fairly conclude it to have been the harbor of New York, the circumference of which, in rough estimation, not widely differing from the preceding supposition. There is no other place on the coast from North Carolina to New York, that would correspond with the preceding description. The mouths of either the Delaware or Chesapeake bays have nothing similar to it. "And behold, upon the sudden, (as it is wont to fall out in sayling,) a contrary flaw of winde coming from the sea, we were inforced to returne to our ship, leaving this land to our great discontentment ; for the great commodity and pleasantness thereof, which we suppose is not without some riches, all the hils shewing mineral matters in them. We wayed anker and sayled *towards the east, for so the coast trended*, and so alwayes *for fifty leagues*, being in the sight thereof, we discovered *an island in form of a triangle*, distant from the main land ten leagues, about the bignesse of the island of the Rhodes ; it was full of hils, covered with trees, well peopled, for we saw fires all along the coast ; we gave it the name of your Majestie's mother,* not staying there by reason of the weather being contrary." The circumstances here mentioned all conspire in a confirmation of the opinion, that the *island* here described was that now known by the name of Martha's Vineyard. The course from Sandy Hook to this island would not vary from a due east course more than a point or thereabout to the north, corresponding to the "trending of the coast to the east,"

* Claudian Island. Claudia was the mother of king Francis.

along the southern shore of Long Island. Agreeably to the best maps the distance from Sandy Hook to the Vineyard does not measure much more than fifty English or French *marine* leagues, or one hundred and fifty English miles. The island, called Martha's Vineyard, is in form also somewhat of a triangle, according to Carey's map. The distance of the island from the main, that is, from its northermost point to Falmouth in Massachusetts, which is said to be nine miles, does not correspond with Verazzini's computation; but supposing his ship to have laid at the westernmost angle of the island, the distance from thence to the nearest main land—Saconnet Point, in the State of Rhode Island, might be roughly estimated at about 30 miles, or "ten leagues." But, according to geographical treatises, the island of Rhodes, in the Mediterranean, must be nearly double the size of Martha's Vineyard. This, however, might have been an easy and natural mistake in Verazzini.—"And we came to another lande being 15 leagues distant from the island, where we found a passing good haven, wherein being entred, we found about 20 small boats of the people, which with diuers cries and wondrings came about our ship, comming no neerer than 50 paces towards us; they stayed and beheld the artificialnesse of our ship, our shape and apparel, they then all made a loud shout together, declaring that they rejoyced." He then proceeds to describe the appearance, dress, conduct, and behaviour of the Indians at this place, and therein takes occasion to remark;—"We became great friends with these, and one day we entered into the haven with our ship, whereas before we rode a league off at sea, by reason of the contrary weather. They came in great companies of their small boats unto the ship, bringing us of their victuals; they made signes unto us where we might safest ride in the haven for the safeguard of our ship, keeping still our company, and after we were come to an anker, we bestowed 15 dayes in prouiding ourselves many necessary things." "This lande is situate in the paralele of Rome in 41 degrees and 2 terees, but somewhat more cold by accidentale causes and not of nature, (as I will declare unto your highnesse elsewhere) describing at this present the situation of the foresaid country, which lieth east and west. I say that the mouth of the haven lieth open to the south halfe a league broad, and being entered within it betweene the east and the north it stretcheth twelve leagues, where it waxeth broader and broader,

SECT. I.
1524.

SECT. I. and maketh a gulf about twenty leagues in compasse, wherein
 1524. are five small islands very fruitful and pleasante, full of hie and broad trees, among the which islands any great nauie may ride safe without any feare of tempest or other danger. Afterwards turning towards the south in the entring into the hauen, on both sides there are most pleasant hils, with many riuers of most cleare water falling into the sea. In the middest of this entrance there is a rocke of free stone, growing by nature, apt to builde any castle or fortresse there for the keeping of the haven. The 5th of May being furnished with all things necessarie, we departed from the said coaste, keeping along in the sight thereof, and wee sayled 150 leagues, finding it alwayes after one maner, but the lande somewhat higeer with certaine mountains, all which beare a shew of minerall matter, wee sought not to lande there in any place, because the weather served our turne for sayling; but we suppose that it was like the former, the *coaste ranne eastward* for the space of *fiftie leagues*. And *trending afterwards to the north*, wee found another land, high, full of thick woods, the trees whereof were firres, cypresses, and such like as are wont to grow in cold countreys." From all the circumstances mentioned by Verazzini concerning this "haven," which he here last describes, it seems to be placed beyond a doubt that it must be the "haven," or harbour of Newport, in the state of Rhode Island. High and respectable authorities, however, have applied the preceding description of this haven to the harbor of New York.* Whilst "some difficulties," as Dr. Miller observes, "are to be surmounted in applying Verazzini's description to either," those which occur in the application of it to New York appear to be much the most formidable. If this haven be the harbour of New York, and the island spoken of was visited by Verazzini before his entrance into that harbour, where is the island to be found, "fifteen leagues distant" from the harbour of New York, "of a triangular shape," and of even half the size of the isle of Rhodes? How are we to dispose of the harbour "in form of a lake," which he entered after "the

* Dr. Belknap, in his *American Biography*, vol. 1, p. 33, says, that the harbour which Verazzini entered, "by his description must be that of New York," meaning (according to Dr. Miller, in his discourse before cited,) the harbor last described by Verazzini as above, which we have supposed to be Newport. To the opinion of Belknap, Dr. Miller seems to incline; though the latter gentleman acknowledges difficulties attending it, and mentions, that others have considered the whole account as agreeing better with the harbour of Newport in Rhode Island.

space of 100 leagues sayling," as before mentioned, unless we suppose that harbour to have been that of New York? Both the havens described cannot be that of New York—on a contrary supposition, that the latter haven was the harbor of Newport in Rhode Island, the difficulties are not insurmountable. The distance from the island to the "other lande," which we may suppose to be either Sacconet Point or the southern extremity of Rhode Island, the latter easily to be mistaken at that distance for main land, to wit, "15 leagues," or forty-five miles, would nearly answer in measurement. But what seems to put it beyond a doubt is, that Verazzini has given the latitude of this "haven," to wit: "the parallele of Rome in 41 degrees and 2 terees." Supposing the word "teree" to be the same as "tierce," meaning in English, a *third*, he must have meant to say, that it was in 41° and *two thirds* of a degree, that is, in $41^{\circ} 40'$. The latitude of Rome is about $41^{\circ} 50'$. But according to late American geographers,* the town of Newport in Rhode Island is in $41^{\circ} 35'$ north latitude, making the trifling variance from Verazzini of only five minutes. It is not so with the harbour of New York, which, according to the best maps and latest geographers, lies in about $40^{\circ} 40'$, varying from Verazzini one whole degree. The "five small islands" also may be more easily found in the harbour of Newport than in that of New York. Their course, after leaving the "haven" in question, corresponds better with the supposition of its being that of Newport. The "coast running eastward" for the space of fifty leagues, and trending afterwards to the north, seems to describe the bending of the continent round Cape Cod. In short all the preceding courses and distances seem to be irreconcilable in any other way than by referring the description of the last mentioned haven to the harbour of Newport.

The remainder of Verazzini's "Relation" presents but little deserving notice. He appears to have proceeded northwardly along the coast of the country, to fifty degrees, nearly to the most northern part of the coast of Newfoundland, "the lande," as he says, "that was in times past discoured by the *Brittons*."† Having now, says he, "spent all our provisions and victuals, and having discoured about 700 leagues and more of new

*See Morse's geography.

†Verazzini must have here meant the natives of *Bretagne* or Brittany in France, who, as before mentioned, had, about the year 1504, visited Newfoundland, for the purpose of fishing on its banks.

SECT. I. countreys, and being furnished with water and wood, we concluded to returne to France ;"—where he must have arrived some short time previous to the date of his letter, which is the 8th of July, 1524. He afterwards undertook a third voyage, in which he and all his company perished by some unknown disaster, and were no more heard of.

1525.
Stephen
Gomez's
voyage.

About this time also a voyage was made by the Spaniards, which is said to be the first performed by that nation, in which the whole of that part of the coast of North America, now composing the United States, was attempted to be explored by them. One Estevan Gomez, (called by the English, Stephen Gomez,) a Portuguese by birth, who, on account of the great reputation he had acquired as an able navigator, had been selected to accompany Ferdinand Magellan, then in the service of Spain, in his remarkable voyage in the year 1520, wherein he discovered the Straits which have ever since borne his name; and who, perfidiously deserting Magellan, soon after they had entered the South Seas through those Straits, had returned back to Spain, probably jealous of the honour which he perceived Magellan was about acquiring, proposed, soon after his return to the emperor Charles V. the discovery of a more direct passage into the South Seas than that found by Magellan, through the northern part of America. But the emperor, for many reasons which appear to have induced him at that time to discountenance an opposition to the Portuguese claim of the Moluccas, and at the same time, perhaps, disgusted with Gomez's base desertion of Magellan, did not listen to his application in so favourable a manner as he expected. He therefore made proposals of the same nature to the count de Aranda, a Spanish nobleman, and some others, to induce them to send him by this supposed passage to the Moluccas. Less tender of the Portuguese rights than the emperor, and willing to avail themselves of this man's abilities as a pilot, they agreed to furnish him with a ship for that purpose. Accordingly (in the year 1525, as it appears,) Gomez sailed to Cuba, and thence in search of this passage he coasted the continent northward, as high as Cape Ras, at Newfoundland. His heart now failing him, as it is said, or more probably chagrined at not succeeding in finding the much desired passage, he returned to Corunna, carrying with him only some of the unhappy natives, whom he had captured somewhere on the coast. An unlucky jest, which occurred immedi-

ately on his return, injured both his reputation and the credit of the famed north west passage. When the ship came into port, somebody asked what they had on board? A seaman answered, *Esclavos*,—slaves; meaning the poor Indians. A person on shore, not far from the ship, mistaking the sound for *Clavos*—cloves; and setting off immediately for the Spanish court, reported there that Gomez had returned with a cargo of spice from Moluccas. When the mistake came to be discovered, the disappointment, as it generally happens when hopes are unreasonably elevated, produced on the contrary equally unreasonable ridicule and derision on his voyage. The mention of it here, however, serves to illustrate the more early discoveries of the continent of North America.*

This delusion of a north west passage to the East Indies which had thus in Spain prompted this expedition, was at the same time operating in other parts of Europe. As Henry the eighth of England, among other of his inordinate passions, was often actuated with the avidity of wealth, he was induced to listen to the advice of a Mr. Robert Thorne, an English merchant, who had long resided at Seville, in Spain, and had there acquired some knowledge of the East India trade. This gentleman represented to Henry the advantages which his kingdom might derive from such a commerce, and proposed that endeavours should be made to find out a passage to the East Indies, by the north west parts of America.† The king, on mature deliberation, gave orders for two ships to be fitted out for that purpose. They sailed on the 20th of May, 1527, but the voyage was productive of no discovery of importance. One of the ships was lost in the gulf of St. Lawrence, and the other returned in the month of October following, to England. One circumstance attending this voyage of discovery, is perhaps worth mentioning. The king ordered, that “several *cunning* men” should embark in the voyage. The writer, who mentions this,‡ explains them to mean—“persons skilled in the mathematics; who, with the common sort of people, passed now, and long after, for cunning men and conjurers.” By an uncommon association for those days, one of these *cunning* men, it seems, was

SECT. I.
1525.

1527.
English attempt to discover a north-west passage.

* Mod. Univ. Hist., vol. 9, p. 388, 575.

† Mod. Univ. Hist., vol. 10, p. 11, 12.

‡ Harris' Voyages, vol. 2, p. 192.

SECT. I. a priest,—“a Canon of St. Paul’s in London, who was a great mathematician, and a man indued with wealth.”*

1527.

1528.
Pamphilo
Narvez’s
grant.

To return to the Spaniards: Notwithstanding their disappointment in Vasquez’s expedition, before mentioned, they were not altogether discouraged from pursuing their discoveries in Florida. In about four years afterwards, (in 1528,) Pamphilo Narvez, the same commander, it would seem, who a few years before had been ungenerously sent by Velasquez, governor of Cuba, to supersede the great Cortez in his important conquest of Mexico, which he was just at that time completing, obtained from his Catholic majesty, the emperor Charles V., a grant of “all the lands lying from the River of Palms to the cape of Florida.”†

Narvez, in pursuance of his grant, fitted out a powerful armament to conquer the country, with which he landed somewhere on the western side of the coast of Florida, in the month of April, 1528. It does not appear that he explored any part of the continent at any great distance from the coast bordering on the Gulf of Mexico. His expedition was entirely unsuccessful; and he and all his men perished miserably, except a very few, who, after undergoing inexpressible hardships, found their way to Mexico.‡ His grant, however, serves to recognise the Spanish claim at this early period of time, to a most extensive part of the southern coast of North America, comprehending a considerable portion of Louisiana, particularly the most valuable part of it to the United States—the territory of New Orleans.

1539.
Ferdinand
de Soto’s
expedition

Before we quit our observations on the progress of the Spaniards in the southern part of North America, we must trespass a little on the order of time, in briefly mentioning a subsequent expedition of that nation, in about ten years after that of Narvez, for making a conquest of Florida. Ferdinand de Soto, who was

* Hackluyt’s Voyages, cited in Holmes’ Annals, vol. 1, p. 75.

† The above description of Narvez’s grant is taken from Holmes’ Annals, vol. 1, p. 75, who appears to have extracted it from the commission as in *Purchas’s Pilgrims*, which he there cites. The *Rio de las Palmas*, or River of Palms, empties itself into the Gulf of Mexico, in that part of the coast thereof now called the New Kingdom of Leon. The mouth of the river is in about 25° of north latitude. This river is laid down in the map to Vol. 2, of Robertson’s Hist. of America, as being very large, and in the latitude above mentioned. But no river of that name appears in the late map of that country, published in Pike’s Expeditions. A small river, denominated *Rio Tigre*, is there laid down, the mouth of which is nearly in the same latitude as the *Rio Palmas* above mentioned.

‡ Mod. Univ. Hist. vol. 40, p. 380.

governor of Cuba, received from Charles V. the title of Marquis of Florida, with authority as we may suppose, to acquire that country by conquest. He accordingly on the 12th of May, 1539, embarked three hundred and fifty horse, and nine hundred foot, on board of nine ships, at the port of Havanna; the most formidable armament of Europeans that till then had appeared in North America. Pursuing his course to Florida, he disembarked on the 25th of the same month, at the bay of *Spiritu Sancto*, which lies on the western side of the peninsula of East Florida, on the Gulf of Mexico. His route from thence seems to have been in various directions from one Indian tribe to another, as they were then scattered throughout that part of the continent now called the Floridas; and from the length of some of his marches, as mentioned in the account of his expedition, he must have penetrated also far into Georgia, and what is now called the Mississippi Territory, among the Creeks and Cherokees: who are probably the remains of those populous and flourishing tribes of the natives, who are so pompously described by the famous Inca Garcilasso de la Vega, one of the historians of this expedition, and who probably felt a partiality for those, whom he might consider as his countrymen, and consequently a natural indignation at the barbarous usage of them practised on this occasion by Soto. After a series of adventures, experienced by himself and his army, which have the appearance more of romance than reality, during a period of almost five years, and having lost the greater part of his armament, he died of a fever on the banks of the Mississippi; on which event, the officer next in command, prudently contrived to conduct the miserable remnant of them, by water, along the shores of the Gulf, to Panuco, in the kingdom of Mexico. "Thus," says the historian, "ended this expedition, in ruin and poverty to all who were concerned in it; nor did they leave a Spaniard in all Florida."*

We may now attend to the proceedings of the French, in the northern parts of the American continent, when they first began to make serious attempts to form settlements in Canada. Although the loss of Verazzini had discouraged them, for a few years, from fitting out ships for discovery in America, yet, agreeably to the genius and character of that nation, their accustomed activity and energy on such occasions, soon again revived. A certain Jacques Quartier, (called by the English, James Cartier,)

* Mod. Univ. Hist. Vol. 40, p. 381.

SECT. I. a native and an experienced pilot of St. Malo, was prevailed upon by admiral Chabot to undertake another expedition. He accordingly, on the 20th of April, 1534, sailed from that port under a commission from the French king; and on the 10th of May following, he arrived at cape Bonavista, in Newfoundland. Although in cruising along that coast to the southward, he found many commodious harbors, yet the land was so uninviting, and the climate so cold, that he directed his course to the Gulf of St. Lawrence, and entered within a bay there, which he called Le Baye des Chaleurs, on account of the sultry weather which he there experienced, and which has been sometimes since called Spanish Bay.*

1534.
Jacques
Quartier's
voyage.

It may, perhaps, gratify the curiosity of those who are amused with the origin of names, to take notice here of a traditional report, mentioned by some writers, that the Spaniards had long before this voyage of Cartier, visited this coast, but finding no signs of gold or silver, they hurried to get off again, crying out in the Spanish language, *Aca Nada!* that is, There is nothing here! These words the Indians retained in their memory, and when the French now visited the country, and landed, they were saluted by the natives with the cry of *Aca Nada! Aca Nada!* this the French mistook for the name of the country, and have ever since called it *Canada*. The writer from whom this is taken, observes, that this is a very strange derivation, but as he found it in the best French authors, he thought it worth setting down.†

Leaving the bay of Chaleurs, Cartier landed at several places along the coast of the Gulf, and took possession of the country in the name of his most christian majesty. After which, he returned to France, where he arrived on the 5th of September, 1534.

1535.
First at-
tempt of
the
French to
colonise
Candaa.

Cartier's report to the French monarch, of his proceedings, was so favorably received by him, that it was now resolved to attempt the settlement of a colony in the country which he had visited. He was accordingly furnished with three large ships for that purpose, and sent out again with a sufficient number of colonists; among whom were many young men of distinction, who were desirous of accompanying him in the character of volunteers. He arrived in the Gulf on the 10th of August, 1535, and because that was St. Lawrence's day, he then gave it the name of the Gulf of St. Lawrence, which name was subse-

* Harris's Voyages, Vol. 2, p. 349. Mod. Univ. Hist. Vol. 39, p. 407.

† Harris's Voyages, Vol. 2, p. 349.

quently extended to the river, and which both retain to this day. SECT. I.
 Passing by an island, to which he gave the name of Assump- 1535.
 tion, since called Anticosti, he sailed up the Saguenay, a river
 emptying into that of St. Lawrence. Returning from thence,
 and proceeding up the river St. Lawrence, he passed a small
 island, to which he gave the name of Isle aux Coudriers, Isle
 of Hazels, from the number of those trees growing on it; and
 afterwards came to another island so full of vines, that he called
 it the Isle of Bacchus; but it has since acquired the name of the
 Isle of Orleans. He had in his last voyage, the precaution to
 carry two of the natives with him to France, where they learned
 as much of the language, as enabled them now to serve as inter-
 preters between him and their countrymen. Sailing further
 up the St. Lawrence, he entered a small river, where he had an
 interview with an Indian chief, whose name was Donnacona,
 and where he was informed of an Indian town called Hochelaga,
 which was deemed the metropolis of the whole country, and si-
 tuated in an island now known by the name of Montreal, near to
 which it would seem he then was. The inhabitants here, who
 are supposed to have been the Hurons, the most tractable of all
 the Indians then in Canada, treated Cartier and his attendants
 with much hospitality, expressing at the same time astonishment
 at their persons, dress, and accoutrements. He had at this time
 with him only one ship and two long boats, having left the rest
 at St. Croix, a port in the river St. Lawrence, to which port he
 returned, and there spent the winter. The severe cold of the
 climate, together with a more probable cause; the use of salt
 provisions, brought on them the scurvy, with which he and his
 people would have perished, it is supposed, had they not, by the
 advice of the natives, used a decoction of the bark and tops of
 the white pine. On the approach of spring, Cartier prepared to
 return to Europe. Whatever other excellencies of character he
 might have possessed, gratitude does not appear to have been a
 prevalent sentiment with him. He was ungenerous enough to
 kidnap his Indian friend, Donnacona, and carry him to France,
 where he arrived in the spring of 1536.* **1208934**

As Henry VIII. and Francis I. were at this time upon the very
 best terms, and as neither of them expected to draw much imme-
 diate wealth from their North American expeditions, it was natu-
 ral that that they should not suffer that harmony, which then sub-

* Harris's Vol. 2, p. 349. Mod. Univ. Hist. Vol. 39, p. 408.

SECT. I. sisted between them, to be interrupted by the feeble attempts which
 1536. the subjects of each were then carrying on for the establishment of colonies in America. In corroboration of this it may be observed, that such establishments were with Henry but secondary objects; for, his principal desire was to find out a north-west passage, so that, agreeably to his imperious temper, he might have a way of his own to the East Indies, and not be obliged to follow the route either of the Spaniards or Portuguese. It was this inclination of the king, that indirectly produced a spirit in the English nation, at this time, for discoveries and settlements in the northern parts of America, notwithstanding the many difficulties and dangers which appeared to attend them. Accordingly a Mr. Hore, a merchant of London, a man of considerable estate, of an athletic constitution and undaunted fortitude, and addicted to the study of the sciences of geography and astronomy, resolved to undertake a voyage, and attempt a settlement in Newfoundland. He no sooner made his intention known, than he received all the countenance and encouragement from the crown that he could expect; and as this gave much credit to the expedition, so that in a short time many young gentlemen of good fortunes and distinguished families, offered to share both the expense and dangers of the undertaking. Among these were some men of the learned professions, particularly a Mr. Thomas Butts, son of Sir William Butts, the king's first physician, and a Mr. Rastal, brother to Serjeant Rastal, the eminent special pleader. About the end of April, 1536, all things were ready, and the whole of the companies of both ships, amounting to one hundred and twenty, mustered at Gravesend, where, with much ceremony they embarked. They soon after sailed, and arrived in the space of two months at cape Breton; from whence they sailed round a great part of Newfoundland, to Penguin island. They afterwards went on shore upon the east side of Newfoundland, where they staid till their provisions were nearly exhausted. Being then afraid to trust themselves at sea in such a condition, they delayed going on board till they were in such distress, that they began secretly to murder and eat one another! This horrid practice coming to the knowledge of their captain, or governor, he, by a most judicious and pathetic speech, brought them to resolve rather to live upon grass and herbs, than to subsist any longer by this detestable method. But it happened soon after that a French ship put in there well manned and well victualled, of which the Englishmen resolved to take advantage; and there-

English
 attempt to
 settle
 New-
 foundland.

fore, watching a fair opportunity, they possessed themselves of the French ship, and leaving their own, sailed directly for the coast of England. They returned safely; but some of them so much altered by their fatigues, that their friends did not know them again; particularly young Mr. Butts, whose parents could not recognise him, but by a mark on his knee. Another circumstance relating to this unfortunate enterprise, is mentioned also, as redounding much to the credit of Henry VIII. The Frenchmen, whose ship had been thus taken, came to England not long afterwards, to complain of the violence committed upon them. King Henry examined very minutely into the affair, and finding that extreme want was the sole cause of an action, otherwise inexcusable, he satisfied the French to the full extent of their demands, out of his own coffers, and pardoned in his own subjects that wrong, which necessity forced them to commit.*

The accounts which had been given in France of the before mentioned voyage of Cartier to Canada, had, according to some writers, made an unfavorable impression on both the nation and its monarch. Not being able to produce either gold or silver, all that this unfortunate gentleman could urge about the utility of the settlement and the fruitfulness of the country was treated with neglect by the public. Some individuals, however, appear to have cherished a different opinion. For, in about four years after Cartier's expedition before mentioned, the project of settling Canada began again to be talked of, and a gentleman of Picardy, whose name was Francis de la Rocque, Lord of Roberval, undertook to accomplish this design. To qualify him for this, king Francis I. by letters patent dated January 15th, 1540, created him viceroy, and lieutenant-general in Canada, Hochalaga, Saguenay, Newfoundland, Belle-isle, cape Breton and Labrador, giving him the same power and authority in those places that he had himself. This gentleman, who had a good estate, fitted out two ships at his own expense, and prevailed upon James Cartier, by the large promises he made him, to undertake another voyage to Canada. La Rocque not being ready for embarkation himself, he sent Cartier with five ships before him, having previously obtained for him a royal commission as captain-general.† Car-

SECT. I.
1540.

La Roc-
que's at-
tempt to
settle Ca-
nada..

* Harris' Voyages, vol. 2, p. 192.

† This commission is inserted entire in Hazard's Collections, vol. 1, p. 19, 21. It is worthy of remark, that in this commission to Cartier, power is given to him to choose fifty persons out of such criminals in prison as shall have been convicted of any crimes whatever, except treason and counterfeiting money, whom

SECT. I. tier commenced this voyage in May, and after encountering many
 1540. storms landed in Newfoundland, on the 23d of August. Roberval not arriving, he proceeded to Canada; and on a small river four leagues above the port de St. Croix, and at no great distance from where Quebec now stands, he built a fort and began the first settlement in Canada, which he called Charlebourg. Cartier having waited there in vain above a year, for the arrival of the viceroy Roberval, and having nearly consumed all his provisions, and now dreading an attack from the savages, set out in the year 1542 on his return to France. Roberval, with three ships and two hundred persons, coming to recruit the settlement in Canada, met him at Newfoundland, and would have obliged him to return to his province; but Cartier eluded him in the night and sailed for Bretagne. The viceroy proceeding up the river St. Lawrence four leagues above the island of Orleans, and finding there a convenient harbor, built a fort, and remained over the winter. It is probable that he returned to France in the next year; for we find him again, in the year 1549, embarking for the river St. Lawrence, accompanied by his brother and a numerous train of adventurers; but they were never heard of afterwards. With them expired, or at least ceased for many years, all the hopes which had been conceived in France of making settlements in America.*

1546.
 Proceedings of the
 English.

To return to the proceedings of the English nation. Although Henry VIII., during his long reign, was frequently at open enmity with Spain, and, for a considerable part of it, was under no restriction from a papal bull, yet his interference in the affairs of the continent, and the vexation he experienced about his wives, seem to have so much engrossed his attention, and of consequence that

he should think fit and capable to serve in the expedition. See an account of a settlement of convicts on the Isle of Sables, by the French, in the year 1598, post. p. 113. The crews of both Columbus and Vasquez de Gama, consisted, it is said, in part of criminals, who were pardoned upon condition of embarking in these expeditions. *Barrington's Observations on the Ancient Statutes*, p. 446.

* Harris's Voyages, vol. 2, p. 349. Mod. Univ. Hist. vol. 39, p. 408. It seems to be alleged here, in the Mod. Univ. Hist. that notwithstanding this loss of Roberval and his adventurers, some few French settlers still remained in Canada. If so, they must have been some left there by him on his return to France, after his first voyage in 1542, when he met Cartier. This seems, however, to be contradicted by a passage in Charlevoix's *Nouv. France*, 1, 22, "Avec eux tombèrent toutes les esperances, qu'on avoit concues de faire un etablissement en Amerique." And in Harris's Voyages, just cited, it is said that "it was this gentleman, (Roberval) who first fixed some French settlements in America, which, however, were afterwards abandoned."

of the nobility and gentry of his kingdom, that his reign appears to have been unfavorable to the progress of discovery. SECT. I.
1546.

In the feeble minority of his son Edward VI., less was to be expected. It seems, from the preamble to a statute made in the second and third year of this king's reign,* that, "within a few years, then past, there had been levied and taken by certain officers of the admiralty, of such merchants and fishermen as had used and practised adventures and voyages to Iceland, Ireland, and other places, commodious for fishing, divers great exactions, as sums of money, doles, and shares of fish, for licenses to pass the realm for such purposes;" severe penalties were therefore enacted against such offenders. This statute appears to have originated from some abuses either connived at or practised by the king's uncle, Thomas Seymour, lord high admiral of England, who was attainted by an act of parliament of this same session. As the admiral had undoubtedly formed very unjustifiable schemes of ambition, and probably took this method of obtaining money as the means of success in those schemes, there is every reason to suppose that the accusations against him on this subject, were not without foundation. The act, however, serves to show, that the English fishery on the coast of Newfoundland, was at this period an object of such national importance as to deserve legislative encouragement; and it is said to have been the first act of parliament that ever was made in relation to America.† Fishery
of New-
foundland.

1548.

The pension which was in this reign also granted to Sebastian Cabot,‡ seems to imply, that his services in the discovery of North America were not deemed entirely unworthy of remuneration. It must be observed, however, that in the reigns of both Henry and his son Edward, the ruling persons in England appear to have been less desirous of making discoveries of new countries and settlements therein, than in exploring a more expeditious route to the East Indies. After failing in some of their attempts to find out what was called a north-west passage thereto, the minds of the nation seem to have been at this time turned towards a dis- 1549.
Pension
granted to
Cabot.

* 2 and 3 Edw. VI. c. 6, at a parliament holden November 4th, 1548.

† Chalmers' Annals, ch. i. note 10. Holmes's Annals, vol. i. p. 94.

‡ See the letters patent for this pension at large, in Hazard's Collections, vol. 1, p. 23. It bears date, January 6th, 2 *Edwd.* 6, (which, according to new style, was January 6th, 1549.) It is said, in Harris's Voyages, vol. 2, p. 193, that Cabot was by this patent created grand pilot of England, but no such grant of an office appears in the instrument published by Hazard. He seems to have been at the head of a company, which existed in England at this time, under the title of "Merchant Adventurers for the discovery of New Lands."

SECT. I. covery of what was called the north-east passage. This was, in
1549. all probability, a more preponderating cause which induced them to hold Mr. Cabot's talents in such high request; and this strange infatuation of the nation about these passages might probably also be one cause of preventing their attention at this time to the more substantial and practicable pursuits of Cabot's discoveries in America.

In the reign of Queen Mary, her marriage with Philip, king of Spain, necessarily put a stop to any thing whatever, that might possibly interfere with the affairs of that nation in America.

1553. Thus, from a singular series of causes, did sixty years elapse from the time when the English first discovered North America, before they had made any effectual efforts to avail themselves of the advantages resulting from that discovery.

SECTION II.*

The reign of Elizabeth favorable to maritime adventures—Sir Humphrey Gilbert, the first conductor of an English colony to America—Letters Patent to him for that purpose—Characteristic incidents relative to Sir Humphrey Gilbert—his first voyage unsuccessful—sails a second time for America—takes possession of Newfoundland—is lost on his return to England.

A variety of concurrent circumstances, contributed to render the reign of Elizabeth favorable to the growth of the maritime power of England. The intercourse which had subsisted for some time between the English and Spanish nations, through the alliance of their monarchs, especially in the reign of Mary, immediately preceding, had diffused among the English a considerable knowledge, not only of the general naval affairs of Spain, but more particularly of their American discoveries and settlements. The wealth, which was supposed to flow in upon the Spanish nation, from that source, would naturally allure the English to some endeavors to participate in these advantages. The accession of Elizabeth to the throne of England, together with the restoration of the reformed religion, in the course of a few years, placed the two nations in a state of hostility towards each other. Queen Elizabeth early foresaw this, and neglected nothing that might keep up and promote a maritime spirit among her people. She therefore, in a particular manner, manifested her approbation of the naval exploits of captain Hawkins, Sir Francis Drake, and other great mariners. It must be observed here, that soon after the discovery of the northern part of America by Cabot, and especially that part of it, denominated by him Newfoundland, divers other European nations resorted to that

1558.
The reign
of Eliza-
beth favor-
able to ma-
ritime ad-
ventures.

*The author had prepared a distinct section, to be inserted here, containing a sketch of the attempts of the French protestants, under the direction and patronage of admiral Coligny, to plant colonies, about this time, in that part of the continent of America, now called South Carolina, in consequence of the oppressions which these protestants experienced from the civil war then raging in France. The emigration of the French Hugonots, under Ribaut and Laudonniere—the cruel massacre of them by the Spanish catholics, under Menendez, and the just retaliation inflicted upon the Spaniards by the Chevalier de Gorgues, form a very interesting part of American history. But as the reader would probably consider these events, as bearing but a slight relation to the history to which this volume is intended as an introduction, it has been thought most proper to suppress that section.

SECT. II. coast, for the great emoluments to be derived from the fishery on
 1558. its banks. Insomuch, indeed, that some of them affected to claim the right of the first discovery of that country. But, as that claim appeared to be without foundation, and as the advantages of the fishery would be much enhanced to any nation that might have possession of that island, the able ministry of that politic princess, could not be insensible to the advantages of making a settlement thereon. Added to this, the extensive progress, which the Spanish nation had now made in the colonization of South America, could not fail to excite the ardent emulation of the English, in following their example by a like colonization of the north. Indeed, the danger of anticipation must have been now urgent; for, it appears by an account published in the year 1578,* that there were fifty sail of English ships, one hundred sail of Spaniards, fifty of Portuguese, and one hundred and fifty French, employed in that year, in the fishery on that coast. It was evident, therefore, that so extensive and inviting a continent as North America, could not now remain much longer without some attempts by some nation, to fix settlements thereon.

1578.
 Sir Humphrey Gilbert the conductor of the first English colony to America.

At this period then, Sir Humphrey Gilbert is mentioned by historians, with the distinction due to the conductor of the first English colony to America. He was a native of Devonshire; inherited a good estate, and had early rendered himself conspicuous by his military services in France, Ireland, and Holland. Having afterwards turned his attention to naval affairs, he published a discourse concerning the probability of a north-west passage to the Indies; which discovered no inconsiderable portion, both of learning and ingenuity, mingled with the enthusiasm, the credulity, and sanguine expectations which incite men to new and hazardous undertakings.† With the honora-

* By a Mr. Parkhurst. See Harris's *Voyages*, vol. 2, p. 198.

† Robertson's *Hist. of America*, vol. 4, p. 159. Tindal's edit. of *Rapin's Hist. of England*, vol. 7, p. 387. Leland's *Hist. of Ireland*, vol. 2, p. 252. In confirmation of the above character of Sir Humphrey, from Robertson, it may be mentioned, that Sir Humphrey was, a few years before this, (between the years 1571 and 1574,) engaged with the learned Sir Thomas Smith, in some visionary schemes of alchymy, through which means they expected to accumulate sudden wealth, by the transmutation of iron into copper. They were men of such reputation for talents and genius, that they drew in secretary Cecil and the earl of Leicester, to join them in the scheme. The project eventuated, as other delusive dreams of alchymy have generally done—in the ruin of the projectors. Sir Thomas smarted very severely in his purse, and Sir Humphrey was impoverished by it. The former sought to recruit his finances by planting colo-

ble desire of increasing his private fortune, by the pursuit of the public service, he applied to Elizabeth for permission to carry his schemes into effect. He represented to her the expediency of settling all those countries upon the continent of America, which had been formerly discovered by Cabot, because otherwise it was not at all unlikely, that the French, who had often reviewed those places, would be desirous of supplanting the English, and because it was very far from being improbable, that those countries abounded with very rich minerals.* Upon these suggestions, he easily obtained from the queen, letters patent, vesting in him sufficient powers for this purpose.

It has been observed, that this being the first charter to a colony granted by the crown of England, the articles of it merit particular attention, as they unfold the ideas of that age with respect to the nature of such settlements.† “She thereby grants to him, and to his heirs and assigns, for ever, license to discover and view such remote heathen and barbarous lands, countries, and territories, as were not actually possessed by any christian prince or people, and the same to hold, occupy, and enjoy to him, his heirs, and assigns for ever, with all commodities, jurisdiction, and royalties, both by sea and land; and license to the said Sir Humphrey, and all such, as from time to time, by royal license, should go and travel thither, to inhabit or remain there, the statutes or acts of parliament made against fugitives, or any other act, statute, or law whatever, to the contrary in any wise notwithstanding.‡ And that he might take and lead in the same voyages, to travel thitherward, or to inhabit there with him, such, and so many of her subjects as should willingly accompa-

June 11.
Letters patent for that purpose.

nies in Ireland, and the latter by the like proceedings in America. It is, however, one among many instances, wherein the very errors of philosophers have been consequentially productive of great good to mankind. See a biographical account of the life of Sir Thomas Smith, published in the *Pennsylvania Magazine* for January, 1776.

* Harris's *Voyages*, vol. 2, p. 199.

† Although this observation is made by Robertson, (*Ibid*, last cited,) yet there seems to be no sound reason, why the letters patent granted by Henry VII. in the year 1502, to Hugh Elliott and others, merchants of Bristol, as before mentioned, should not be called a charter to a colony, as well as this to Sir Humphrey Gilbert. The former, after granting license to the patentees to *discover* new countries, grants them license also, to take out with them, any English subjects to *inhabit and settle* in those countries so discovered—“*et in eisdem inhabitare.*” No permanent settlement in America was ever formed under either of the charters.

‡ See note (D) at the end of this volume.

SECT. II. ny him, so that none of them be such as thereafter should be specially restrained by her. And further, that he, his heirs, and assigns, should have, hold, occupy, and enjoy forever, all the soil of all such lands, &c. with the rights, royalties, and jurisdictions, as well marine as other, within the said lands, with full power to dispose thereof, or part thereof, in fee simple, or otherwise, according to the laws of England, at his and their will and pleasure, to any person within her allegiance, paying unto her the fifth part of all the gold and silver, that should be there gotten: the said lands, &c. to be holden by the said Sir Humphrey, his heirs and assigns, of her majesty, her heirs and successors, by homage, and by payment of the fifth part before reserved. She grants him license to expel all persons, who without his special permission, should attempt to inhabit the said countries, or within two hundred leagues of the place, where he, his heirs, or assigns, should, within six years next ensuing, make their settlement: and she authorises him to capture all persons, with their vessels and goods, who should be found trading within the limits aforesaid, without his license. And for uniting in perfect league and amity, such countries, lands, and territories, so to be possessed and inhabited, as aforesaid, she declares, that all such countries, so to be possessed and inhabited as aforesaid, from thenceforth should be of the allegiance of her, her heirs and successors, and the persons to inhabit them should enjoy all the privileges of free denizens or natives of England. She grants to Sir Humphrey, and his heirs and assigns, for ever, that he and they might, from time to time, for ever thereafter, within the said mentioned remote lands and countries, and in the way by the seas thither, and from thence, have full power and authority to correct, punish, pardon, govern and rule, by their good discretions and policies, as well in causes capital or criminal, as civil, both in marine and other, all such her subjects, and others as should inhabit the said countries, according to such statutes, laws and ordinances, as should be by him, the said Sir Humphrey, his heirs, and assigns, devised or established, for the better government of the said people as aforesaid; so always, that the said statutes, laws and ordinances, may be, as near as conveniently may, agreeably to the form of the laws and policy of England: and also, so as they be not against the true christian faith or religion now professed in the church of England, nor in any wise to withdraw any of the subjects or people of the

lands or places, from the allegiance of her, her heirs or successors."* SECT. II.

1578.

After obtaining this favor from the queen, Sir Humphrey applied himself to his relations and friends, in order to frame a society capable of carrying this design into execution ; for, it seems that the English monarchs of those times, were either unable or indisposed, to defray the expenses of these great naval expeditions, although the public were to be principally benefited by them. Hence, as was observed before, the Cabots were obliged to bear the expenses of their voyages themselves, except with what aid they might procure from the merchants of Bristol ; and it has been attributed to the parsimony of Elizabeth, though it might probably have been owing to her inability, that she contributed but little, besides her royal license, to aid the many important naval expeditions undertaken in her reign. With her letters patent, indeed, for the erection of exclusive companies for trade, she was very liberal. Hence *monopolies* were among the most grievous burthens of her high-toned exertion of prerogative. We are sorry to find, that our worthy knight was among the most zealous advocates for these exertions of royal authority ; perhaps, indeed, self-interest might have an undue operation in his mind. He was a member for Devonshire, in the house of commons, at the parliament holden in the 13th of Eliz. a few years prior to the date of his patent. One Robert Bell, a puritan, (to which sect, as observed by Hume, although their principles appear so frivolous, and their habits so ridiculous, yet the English owe the whole freedom of their constitution,) had, in that session, made a motion against an exclusive patent, granted to a company of merchants in Bristol. Sir Humphrey spoke against the motion : " He endeavoured to prove the motion made by Bell, to be a vain device, and perilous to be treated of ; since it tended to the derogation of the prerogative imperial, which, whoever should attempt, so much as in fancy, could not, he said, be otherwise accounted than an open enemy. For, what difference is there between saying, that the queen is not to use the privilege of the crown, and saying that she is not queen ? And though experience has shown so much clemency in her majesty, as might, perhaps, make subjects forget their duty, it is not good to sport or venture too much with princes. He reminded them of the fable of the hare, who, upon the proclamation, that all

Characteristic incidents relative to Sir Humphrey Gilbert.

* See this charter at large, in Hazard's Collections, vol. 1, p. 24.

SECT. II. horned beasts should depart the court, immediately fled, lest his ears should be construed to be horns; and by this apologue, he seems to insinuate, that even those who heard, or permitted such dangerous speeches, would not themselves be entirely free from danger. He desired them to beware, lest, if they meddled farther with those matters, the queen might look to her own power; and finding herself able to suppress their challenged liberty, and to exert an arbitrary authority, might imitate the example of Louis XI. of France, who, as he termed it, delivered the crown from wardship." Upon this speech, the historian proceeds to observe: "Though it gave some disgust, nobody at the time replied any thing, but that Sir Humphrey mistook the meaning of the house, and of the member who made the motion: they never had any other purpose, than to represent their grievances, in due and seemly form, unto her majesty. But in a subsequent debate, Peter Wentworth, a man of superior free spirit, called that speech an insult on the house; noted Sir Humphrey's disposition to flatter and fawn on the prince; compared him to theameleon, which can change itself into all colours, except white; and recommended to the house a due care of liberty of speech, and of the privileges of parliament. It appears, on the whole, that the motion against the exclusive patent had no effect. Bell, the member who first introduced it, was sent for by the council, and was severely reprimanded for his temerity. He returned to the house with such an amazed countenance, that all the members, well informed of the reason, were struck with terror; and during some time, no one durst rise to speak of any matters of importance, for fear of giving offence to the queen and the council. It is remarkable, that the patent, which the queen defended with such imperious violence, was contrived for the profit of four courtiers, and was attended with the utter ruin of seven or eight thousand of her industrious subjects."*

1579.
His first
voyage un-
successful.

We are to return, however, to the progress which Sir Humphrey made, in carrying into effect his charter of colonization. With the influence of his own character, and the zealous efforts of his half-brother, Walter Raleigh, who, even in his early youth, displayed those splendid talents and that undaunted spirit, which create admiration and confidence, Sir Humphrey at first met with considerable encouragement. But as the time of embarkation approached, some of his associates beginning to form particular

* Hume's Hist. of England, ch. 40.

projects of their own, inconsistent with his general scheme, and others totally failing in the performance of their engagements, his preparations were much thwarted and delayed. He, however, put to sea with such of his friends as had adhered to their promises, among whom it is said, was his brother Walter Raleigh. The voyage proved unfortunate, and was attended with the loss of one of his best ships, and several of his most esteemed friends. Nor is it quite certain that he arrived, in the course of this voyage, at any part of America; but it is supposed, that he met with a severe encounter with the Spaniards, and was on that account obliged to return.*

SECT. II.
1579.

As Sir Humphrey's patent was to expire at the end of six years from the date thereof, unless he made some settlements under it, it soon became necessary for him to resume his schemes, or relinquish them altogether. In the spring of the year 1583, he had again brought his design into some order; but to furnish the necessary expenses thereof, he was obliged to sell what estate he had, though he had great assistance from his friends, and several gentlemen of rank and fortune agreed to go with him in person. With this view a small squadron was fitted out, consisting of five ships and vessels of different burthens, among which was one called the Raleigh, of 200 tons, fitted out by his brother Walter Raleigh, though, it seems, he did not attend him in his second expedition. In all these vessels were shipped about two hundred and sixty men, among whom were shipwrights, masons, carpenters, smiths, miners, and refiners. To complete the equipment of this colony, some singular circumstances were thought necessary, and may be here mentioned in the words of the original account of the voyage, as it is in Hackluyt; "Besides, for solace of our people, and allurement of the savages, we were provided of musike in good varietie; not omitting the least toyes, as morris dancers, hobby-horse, and May-like conceits, to delight the savage people, whom we intended to winne by all faire means possible. And to that end we were indifferently furnished of all pettie haberdasherie wares to barter with those simple people."† The resolution of the proprietors was, that the fleet should begin its course northerly, and follow as directly as they could the trade-way to Newfoundland, from whence, after having refreshed and supplied them-

1583.
His second
voyage.

* Harris's Voyages, vol. 2, p. 201. Holmes's Annals, vol. 1, p. 113.

† Holmes's Annals, vol. 1, p. 113, quotes Hackluyt iii. 149.

SECT. II. selves with all necessaries, their intent was to proceed into the south, and not to pass by any river or bay, which in all that large tract of land should appear worth their looking into. They likewise prescribed the orders to be observed in the voyage, and the course to be steered, which were delivered to the captains and masters of every ship in writing. On the 11th of June, 1583, the fleet sailed from Plymouth; but, on the thirteenth, their large ship, the Raleigh, under pretence that her captain and a great number of her men were suddenly taken ill of a contagious disease, left the fleet and returned to Plymouth; some say, in great distress, but others that it was done with a design to ruin the expedition. Of this circumstance, Sir Humphrey, when he arrived in Newfoundland, wrote to one of his friends in England, with great resentment and asperity.* On the 30th of July they had sight of land in about 51° of north latitude. From thence they followed the coast to the south, till they came to the island Bacalaos. Continuing the same course southward, they came the same day, being the 3d of August, to the harbour of St. John. He found there several vessels, of different nations, to the amount of thirty-six sail, lying in the harbour and fishing therein. They seemed at first disposed to refuse him an entrance into the harbour. But Sir Humphrey, after preparing to make good his passage by force of arms, first sent in his boat to inform the masters of those vessels, that he had a commission from the queen to take possession of these lands for the crown of England. They were satisfied, and submitted to the levying a tax of provisions from each ship, for supplying the wants of Sir Humphrey's small squadron.

Takes possession of Newfoundland.

On the fourth of August, Sir Humphrey, whom they called the general, and his company, was conducted on shore by the masters of the English fishing vessels, and their owners or merchants, who were with them. On the fifth, the general having caused a tent to be set up in view of all the ships in the harbour, to the number of between 30 and 40 sail, and being accompanied by all his captains, masters, gentlemen, and soldiers, summoned all the merchants and masters, both English and foreigners, to be present at his taking a formal and solemn possession of those territories. Being assembled, he caused his commission, under the great seal of England, to be openly read before them, and to be interpreted to those who were strangers to the English

* See note (E) at the end of this volume.

tongue. By virtue of this commission, he declared that he took possession of the harbour of St. John, and two hundred leagues every way; invested her majesty with the title and dignity thereof, and having had (according to custom) a rod and turf of soil delivered to him, entered and took possession also for himself, his heirs, and assigns forever. He signified to those who were present, and through them to all men, that from thenceforward they should look upon those territories as appertaining to the queen of England, and himself, authorized, under her majesty, to possess and enjoy them, with power to ordain laws for the government thereof, agreeable (as near as conveniently could be) to the laws of England, under which all people coming thither for the future, either to inhabit or by way of traffic, should submit and be governed. He then published three laws for the government of the territory. By the first, public worship was established according to the church of England; by the second, the attempting of any thing prejudicial to her majesty's title, was declared treason, according to the laws of England; by the third, the uttering of words to the dishonour of her majesty, was to be punished with the loss of ears and the confiscation of property. To all this, the multitude then present, as well strangers as Englishmen, assented, it is said, by a general voice. The assembly was then dismissed, and not far from the same place a pillar of wood was erected, to which was infixed a plate of lead, with the arms of England engraven thereon. For the further establishment of this possession so taken, the general granted "in fee ferme" several parcels of land lying by the water side, both in the harbour of St. John, and elsewhere, with a reservation of a certain rent and service unto Sir Humphrey Gilbert, his heirs, or assigns for ever.

Some writers have attributed all this solemnity to a high degree of vanity in the west country knight; and have ridiculed his pretences to improve the trade of the kingdom, and enlarge the queen's dominions by cutting a turf; in which, however, they injure this gentleman's memory extremely; for, the plain reason of Sir Humphrey's conduct throughout this affair, was his anxiety to give some effect to his grant, which was perpetual to him, and his heirs, in case he took possession of any countries within six years, as before mentioned, and otherwise it was void. There were now but a few months of this period to come. He had sold his estate in England, and it concerned him very

SECT. II.
1533.

SECT. II. nearly to secure an estate somewhere else; and therefore this
 1583. parade was not from any principle of vanity, but from justifiable prudence and good economy, especially under the full expectation, as we may suppose him to have then been, of settling a colony in that part of the country. The important public consequences, also, which are said by later writers to have flowed from his conduct herein, will effectually do away all ridicule attending it. This formal possession now taken, in consequence of the prior discovery by Cabot, has been considered by the English as the foundation of the right and title of the crown of England to the territory of Newfoundland, and *to the fishery on its banks*. It is perhaps unnecessary to add, that their powerful navy has enabled them to support this right, however flimsy and exceptionable it may appear.

Is lost on
 his return
 to England

Sir Humphrey remained at St. John's some time, to collect a tax of provisions, granted to him by every ship which fished upon the coast adjoining, to repair his ships, and in the mean time to explore the island. They found no inhabitants in the southern part of the island, the natives having probably abandoned it on its being so much frequented by Europeans; but in the northern there were some savages who appeared to be harmless and inoffensive in their tempers and dispositions. He now resolved to proceed in his discoveries southward; and accordingly sailed, on the 20th of August, from the harbour of St. John's. Pursuing this route for some days, they found themselves on the 29th of the month in the midst of dangerous shoals, in latitude 44°, somewhere about Nova Scotia or Cape Breton. Here they lost one of their best ships, in which perished near a hundred persons. Of this number was Stephen Parmenius Budeius, a learned Hungarian, who had accompanied the adventurers to record their discoveries and exploits. After this loss, the men being generally discouraged and in want of necessaries, Sir Humphrey proposed returning to England, having, in his judgment, made discoveries sufficient to procure assistance enough for a new voyage, in the succeeding spring. His people, when he made this proposal, were at first reluctant in their assent to it; but upon hearing his reasons they submitted; and, according to his advice, on the last of August, they altered their course and steered for England. When they left St. John's, Sir Humphrey had embarked himself on board of the smallest vessel he had with him, which was only of ten tons burthen, thinking her the

fittest for observing and discovering the coast. In a few days SECT. II.
after they had taken their departure from Cape Race, the most 1536.
eastern promontory of Newfoundland, they met with violent
storms, attended with heavy seas, which so small a vessel was
unable to sustain. About midnight, on the 9th of September,
the men in the larger ship, having watched the lights in the
small vessel in which Sir Humphrey was, observed them to be
suddenly extinguished. It was supposed, that she sunk that in-
stant, for she was never afterwards heard of. Thus perished a
man, whose spirit of adventure certainly contributed much, at
least by example, to the early population of British America, and
whose genius and talents entitled him to a better fortune.*

*Harris's Voyages, Vol. 2, p. 199, 200. Holmes's Annals, Vol. 1, p. 113.

SECTION III.

Sir Walter Raleigh—his rise and character—obtains a renewal of Sir Humphrey's letters patent to himself—Voyage of capt. Amidas and Barlow.—The effects of their voyage in England—Sir Richard Greenville's attempt to settle a colony in North Carolina.

SEC. III. The laudable schemes of Sir Humphrey Gilbert, happily for mankind, did not expire with him. His half and younger brother, Sir Walter Raleigh, as he appeared to inherit his useful qualities, seemed also to become heir to his pursuits. He was at this period of time in high favour with the queen. Some writers seem to insinuate, that most of Queen Elizabeth's favourites were remarkable for their personal attractions. All historians who speak of Sir Walter appear to agree that he was conspicuous in his time, not only for the symmetry of his form and the manliness of his deportment, but for his insinuating address with the ladies. Although most authors place the era of his rise at court about this time, yet they do not agree so exactly in assigning the cause of it. The military eclat which he had, a year or two before, acquired in Ireland, where he commanded a company under Lord Grey, against the Spaniards and Irish rebels, was, according to some, the cause of his being known at court. Others would have the earl of Leicester to have been the chief agent in his rise, who, being in the decline of life himself, thought that he might still continue to govern the queen through the intermediate agency of Sir Walter's youthful form and pleasing manners. Others again, attribute his introduction at court to the influence of Ratcliffe, earl of Sussex, in order to supersede his great enemy, the earl of Leicester, himself. But his biographer, in a small tract of his life, prefixed to his *History of the World*,* thinks it proper to lay some stress on a ridiculous incident, which as he supposes, might have been one cause of his aggrandizement. For the mention of this he apologizes, by remarking, that "little transactions are often the best inlets to truth and the mysteries of state;" and thus relates it: "Our captain (Raleigh) coming over out of Ireland upon the afore-

*This tract here cited, does not appear to be the one written by *Oldys*, but one prior to it, printed in 1687.

mentioned cause to court, in very good habit, (which it seems was the greatest part of his estate,) which is often found to be no mean introducer where deserts are not known, found the queen walking, till she was stopt by a plashy place, where she scrupled treading on; presently he spread his new plush coat on the ground, on which the queen gently trod, being not a little pleased, as well as surprised, with so unexpected a compliment. Thus, as one remarks upon this story, *an advantageous admission into the first notices of a prince, is more than half a degree to preferment.** For he presently after found some gracious beams of favour reflecting on him, which he was resolved, and well knew how, to cherish and contract. To put the queen in remembrance, he wrote in a window obvious to her eye,

“Fain would I climb, yet fear I to fall;

which her majesty either espying or being shown, under-wrote this answer,

“If thy heart fail thee, climb not at all.”

Whichever of the foregoing causes be adopted, and it is probable that they all might have combined in his promotion, it is very certain, that he stood high at this time in the favour of the queen.†

Sir Walter, thus placed in a familiar intercourse with royal authority, would naturally be led to avail himself of his situation, in carrying into effect the honourable schemes of his brother Sir Humphrey Gilbert; especially when those schemes were not only congenial to a young and ambitious mind, but were also the means of recommendation to the patroness of his fortunes.‡

He obtains a renewal of Sr Humphrey's letters patent to himself.

* Fuller's Worthies.

† See note (F) at the end of this volume.

‡ It would seem, that at this time, considerable foreign trade was carried on in the west of England, particularly in Devonshire, by some merchants and others, resident in that part of the country. Indeed, as will be seen hereafter, in the course of this work, the settlements of Virginia and New England, were principally owing to them. Among these public-spirited persons, the Gilbert and Raleigh family of that county seems conspicuous. It was in the year 1584, (new style,) February 6th, a little more than a month prior to the grant to Sir Walter, that letters patent were granted to Mr. Adrian Gilbert, “of Sandridge, in the county of Devon, gentleman;” (whom we may suppose to have been a full brother to Sir Humphrey, and half brother to Sir Walter Raleigh,) and others, for the search and discovery of a passage to China and the Molucca Isles, “by the north-westwarde, north-eastwarde, or northwarde,” creating them a corporation by the name of “The colleagues of the fellowship, for the discoverie of the north-west passage.” (See the letters patent at large in Hazard's Collections, Vol. 1, p. 28.) But this grant was in some measure superseded by a like

SEC. III. Having maturely digested a plan for the discovery and settlement of those parts of North America, lying north of the Gulf of Mexico, and which were as yet unknown and unsettled by the Spaniards, he laid it before the queen and council; to whom it appeared a rational and practicable undertaking. He, therefore, easily obtained a renewal of letters patent to himself, in as ample form, and containing nearly the same clauses and provisions as in that to his brother Sir Humphrey Gilbert.* As the monarchs of England, not only of the Tudor line, but afterwards of the Stuarts, were unwilling to be dependant on their parliaments for their revenues; they were, therefore, generally too poor and needy, to assist with money in the promotion of such laudable enterprises, as the one now contemplated by Raleigh. With their *patents for exclusive trade*, especially with those which promised any emolument to the crown, they were extremely liberal. Hence, *monopolies* were among the most grievous burthens, and the most frequent subject of complaint, even during the popular reign of Elizabeth. Sir Walter was, therefore, obliged to have recourse to the assistance of private individuals, to enable him to pursue his schemes. Before he had obtained his patent, he had formed an association of his friends,† and had prevailed on several merchants and gentlemen, to advance large

project set on foot about the same time in London, under the patronage of Mr. William Sanderson, an eminent merchant of that city. The two associations uniting, captain John Davis was sent out for that purpose, in the year 1585, to the northern coasts of America; who made considerable discoveries in that part of the American continent since called Davis's Straits. (See Harris's Voyages, Vol. 2, p. 203.) The reader's attention may be interrupted for a moment, in noticing a remarkable clause in these letters patent, to Adrian Gilbert: mutiny on board the ships, while on their voyage, was to be punished, "as the cause shall be found, in justice to require, by the verdict of twelve of the companie, sworne thereunto;" that is, by a jury selected from the ships' company.

* They bear date the 25th of March, 26th of Eliz. (1584, new style,) and are nearly *verbatim* the same as the beforementioned patent to Sir Humphrey Gilbert. One small variance between them may be noted: in the clause granting power to Sir Walter, to capture all such vessels as shall be found trafficking within the limits of his grant, without his license, exception is made of "the subjects of our realms and dominions, and all other persons in amitie with us, trading to the *Newfoundlands* for fishing, as heretofore they have commonly used." This exception is not in the patent to Sir Humphrey Gilbert. See them at large in Hazard's Collections, Vol. 1, p. 33.

† Among these were Sir Richard Grenville, his kinsman, and Sir W. Sanderson, who had married his niece. Burk's Hist. of Virginia, Vol. 1, p. 45. The latter gentleman was, probably, the same as the one before mentioned, who was concerned with Adrian Gilbert, in the discovery of a north-west passage.

sums of money towards carrying on his designs.* According-ly, within a month after the date of his patent, he was enabled to fit out two ships, under the command of captains Philip Amidas and Arthur Barlow, to visit the countries which he intended to settle, and to acquire some previous knowledge of their coasts, their soil, and productions.

SEC. III.
1584.

They sailed from the west of England on the 27th of April following; and to avoid the error of Sir Humphrey Gilbert, in holding too far north, they shaped their course for the Canaries, which they passed on the tenth of June,† and proceeding from thence to the West Indies, they crossed the Gulf of Mexico, and on the second of July, fell in with the coast of Florida. They sailed along this coast, till they came, on the 13th of the month, to a river, where they anchored; and going on shore, took possession in right of the queen, and for the use of the proprietors. They went to the tops of the hills which were nearest to the shore, from whence, though they were not high, they discovered the sea on all sides, and found the place where they landed, to be an island of about twenty miles long; then called by the natives, Wokoken.‡

Voyage of
captains
Amidas
and Bar-
low.

On the third day after their arrival and landing, they saw three of the natives in a canoe, one of whom went on shore and waited, without any signs of apprehension, the approach of a boat from the ships, which was sent to him. He spoke long and earnestly to them, in his own language, and then went with them on board, without any apparent fear. They gave him a shirt and hat, and some wine and meat, with all which he seemed pleased. After he had, with a seeming satisfaction, narrowly viewed the ships, and examined every part with his eyes and touch, he went in his canoe, to about a quarter of a mile's distance, where he fished, and returned in a short time, with his canoe loaded with fish; which he divided equally in two heaps, and making signs that each vessel should take one, he departed.

The next day several canoes appeared in view; in one of

* Oldmixon's British Empire in America, Vol. 1, p. 210. Mod. Univ. Hist. Vol. 39, p. 235.

† Another reason for this course is said to be thus expressed in the account of this voyage, written by Barlow: "Because we doubted that the current of the Bay of Mexico, between the Capes of Florida and Havannah, was much stronger than we afterwards found it to be." Burk's Hist. of Virginia, Vol. 1, p. 46. Mod. Univ. Hist. Vol. 39, p. 236.

‡ See note (G) at the end of the volume.

SEC. III. which came the king's brother, whose name was Granganemeo,

1584. attended with about forty men. The king himself, whose name was Wingina,* lay ill of the wounds he had received in battle, with a neighbouring nation. The behaviour of Granganemeo, when he approached the ships, is best described in the very words of the original account of the voyage, as preserved in Hackluyt. "The manner of his coming was in this sort; hee left his boates altogether as the first man did (the day before) a little from the shippes by the shore, and came along to the place over against the shippes, followed with fortie men. When he came to the place, his servants spread a long matte upon the ground, on which he satte downe; and at the other end of the matte, foure others of his companie did the like, the rest of his men stood round about him, somewhat a farre off: when we came to the shore to him, with our weapons, hee never moved from his place, nor any of the other foure, nor never mistrusted any harme to be offered from us; but sitting still, he beckoned us to come and sit by him, which we performed: and being set, hee made all signs of joy and welcome."† Our navigators made to him and his four chiefs, presents of several toys, which he kindly aceeded; but he took all himself, and gave them to understand, that none there had a right to any thing but himself. Two days afterwards they let him see their merchandise; of which nothing seemed to please him more than a pewter dish, for which he gave twenty deerskins; and making a hole in the rim of it, hung it over his neck for a breast-plate, making signs that it would defend him against the enemy's arrows. The next thing he bought was a copper kettle, for which he gave fifty skins. As long as he thought fit to traffic with them, none but such as like him, wore plates of gold or copper on their heads, were allowed either to buy or sell; but as soon as they had done, every man had his liberty. They offered very good exchange for hatchets, axes, and knives; and would have given any thing in truck for swords, but the English would not part with any. Granganemeo came afterwards frequently on board, and would eat, drink, and be merry with them; and once he brought his wife and children with

* The country was called by the natives, Wingadocia, in respect possibly to the reigning chief, Wingina. Wingina's residence, at the time of this voyage, was at a place then called by the Indians—Secotam; which, according to Williamson's *Hist. of North Carolina*, (vol. 1, p. 38,) was at or near the present town of Beaufort in Content county.

† See Holmes's *Annals*, vol. 1, p. 117.

him, who afterwards came frequently with her followers only. SEC. III.
 The English often trusted him with goods upon his word, to 1584.
 bring the value at a certain time, which he never failed in doing. He had a strong inclination to have a suit of armour and a sword, which he saw in one of the ships ; and would have left a large box of pearls in pawn for them ; but they refused it, that he might not know they set a value upon them, till they could discover whence he got them. He supplied them every day with venison, fish, and fruits ; and invited them to his habitation on Roanoke island. After this friendly intercourse, captain Barlow, with seven of his men, went in a boat twenty miles into the river Occam, (supposed to be the same as Pampticoe sound,) and the evening following came to the isle of Roanoke, at the mouth of Albemarle sound, where they found a village, the residence of Granganimeo, situated in the northern extremity of the island, and consisting of nine houses, built of cedar, and fortified with sharp palisades. When the English arrived there in their boat, Granganimeo was absent ; but his wife received them with generous hospitality. Their boat she ordered to be drawn on shore, that she might not be injured by the surge ; the oars, for better security, were taken to her house ; while the English, by her orders, were conveyed from their boat on the backs of the natives. She took off their stockings, and washed their feet in warm water. When dinner was ready, she led them into an inner room, where they were feasted with venison, fish, fruit, and homini. Whilst they were eating, some of her people came in with their bows and arrows. The English, suspecting treachery, flew to their arms ; but the wife of Granganimeo, perceiving their suspicions, ordered the bows to be taken from her people, their arrows to be broken, and themselves to be beaten out of the house. In the evening,* the English thought it prudent to return to their boat, and having put off at a small distance from the shore, lay at anchor. This generous woman seemed hurt by this precaution ; but had a supper dressed for them and delivered at the boat's side, with the

* There seems to be some difficulty in reconciling the *time* of Barlow's arrival at Roanoke island, *in the evening*, according to his own account, as before cited, and the time here above mentioned, of their retiring to their boat. If they arrived in the *evening* at the island, there certainly was not time sufficient for all the circumstances above mentioned to have been acted before they retired to their boat. I have, however, related it as I find it in several respectable historians. See Burk's Hist. of Virginia, vol. 1, p. 50. Holmes's Annals, vol. 1, p. 118.

SEC. III. pots in which it was cooked. Perceiving their continued distrust, she ordered several men and thirty women to sit on the bank, as a guard to them through the night, and sent several mats to screen them from the weather.

1584.

This island is said to have been the limit of their discovery during this voyage, nor were they fortunate enough to procure any information, except a confused account from the Indians of the wreck of some ship on the coast, between twenty and thirty years before.*

Having loaded their ships with furs, sassafras, and cedar, and procured a small quantity of pearl, which was supposed to be an evident sign of the great riches of the country,† they returned to England about the middle of September, carrying with them two of the natives, whose names were Manteo and Wanchese, who voluntarily accompanied them.‡

The effects
of their
voyage in
England.

The adventurers in this voyage, on their return, spread abroad marvellous accounts of their discoveries. To those who are now well acquainted with that part of the continent which Amidas and Barlow visited, the description which they gave of it on their return can be considered only as a scarcely plausible fiction, principally intended to induce future adventurers. Their accounts, however, of the beauty of the country, the fertility of the soil, the mildness of the climate, and the innocence of the natives, were pictured and represented to the queen so much in the style of the scenery of a romance, that her majesty was graciously pleased, it is said, to promise what assistance it should be necessary for the crown to give towards promoting a settlement there. Sir Walter Raleigh, with the gallantry of a courtier, in compliment to his mistress—a virgin queen, thought it proper to bestow on this new discovered paradise the name of *Virginia*. Others, though with less probability, attribute that denomination to the queen herself, because she fancied, that it exhibited man-

* Burk's Hist. of Virginia, vol. 1, p. 50.

† It is said, they also brought home with them some tobacco, the first that was seen in England. *Oldmixon's British Empire in America*, vol. 4, p. 211. Although the introduction of tobacco into England is generally referred to the time of governor Lane and his colonists, as hereafter mentioned, yet it is not probable that capt. Amidas and Barlow would have omitted, not only to notice a custom then in common use with the Indians, but also to bring with them a sample of such a remarkable vegetable. It would seem, however, that tobacco was first brought into England by Sir John Hawkins in 1565. See Holmes's Annals, vol. 1, p. 124.

‡ Harris's Voyages, vol. 2, p. 201.

kind in their primitive innocence, and the creation in its first SEC. III.
virgin purity and plenty.*

1585.

Encouraged by the reports of his navigators, Sir Walter hastened his preparations for taking possession of this inviting property. It was his first intention to have commanded in this expedition himself, and to have carried with him a sufficient number of forces to have completed his design of making a settlement there; but being at that time jealous, that his absence might be prejudicial to his interest at court, he committed the care of this second enterprise to Sir Richard Grenville, his relation,† who was interested with him in his patent, before mentioned, obtained from Elizabeth.‡ Sir Richard, with seven small ships, laden with provision, arms, ammunition, and spare men, to settle a colony, with the two Indians before mentioned, Wanchese and Manteo, to assist him in his negotiations with their countrymen, sailed on the 9th of April, 1585, from Plymouth.¶ But, induced by a desire of sharing in the plunder of a predatory war, then carried on by the English against the Spaniards, in capturing their vessels bound home with the treasures of their Mexican mines, as well as from unacquaintance with a more direct and shorter course to North America, he took the southern route by the West India islands. He spent some time in cruising among these, and in taking prizes; so that it was towards the close of June, before he arrived on the coast of North Ame-

Sir Richard Grenville's attempt to settle a colony in N. Carolina.

* Oldmixon's *British Empire in America*, vol. 1, p. 211. Harris's *Voyages*, vol. 2, p. 202.

† It has been supposed, that Sir Walter Raleigh himself went to Virginia with this colony; but this mistake, it appears, has arisen from a mistranslation of a passage in Heriot's narrative, published in Hackluyt's *Voyages*. It is thus expressed in the original English: "The actions of those who have been by Sir Walter Raleigh *therein employed*;" which is thus rendered in the Latin translation: "*qui generosum D. Waltherum Raleigh in eam regionem comitati sunt.*" See Burk's *Hist. of Virg.* vol. 1, p. 55.

‡ Oldmixon, in his *British Empire in America*, vol. 1, p. 212, speaks of this expedition as carried on by a *company*, and that it was the first of that kind established in Europe. But it seems, that they were not a regular corporate body, until the reign of king James, who incorporated them by the name of "The governor and company of the West Indies." They were afterwards dissolved by Charles I, it is said, for their mal-administration. Harris's *Voyages*, vol. 2, p. 202.

¶ It is said, that Sir Richard was accompanied in this voyage by the celebrated circumnavigator Sir Thomas Cavendish, who, being then a young man of family and fortune, fitted out a ship of 120 tons burthen, called the *Tyger*, at his own expense, in which he attended Sir Richard, without any profit. Harris's *Voyages*, vol. 1, p. 23. *Mod. Univ. Hist.* vol. xi. p. 411.

SEC. III. rica. It is said, that in going into the harbour of Wokoken, he
 1585. lost the ship which he himself commanded.* He touched at both the islands where Amidas and Barlow had landed. Manteo, the faithful Indian whom they had carried to England, and who was now brought back with Sir Richard, became of essential service. His knowledge of the language made him useful as an interpreter, while his attachment to the persons of the English smoothed the difficulties to a free and friendly intercourse with his countrymen. Under his guidance they made several excursions, and visited several villages on the islands and the main. They discovered an Indian town near the mouth of Pamptico river, (sometimes called the *Tar river*,) and another town near the mouth of the Neus; from which they directed their course to Secotan, (the town before mentioned near Beaufort,) where they were civilly entertained by Wingina, the king of the country, as before mentioned. From Secotan some of the boats proceeded, by the shortest course, to Wokoken: but Grenville, with the other boats, returned to Aguascosack, the town on the Neus before discovered by them, for the frivolous purpose of demanding a silver cup, that had been stolen from him, when he visited that town on his late circuit. The cup was not restored according to promise; and the Indians, apprehending danger, fled to the woods: upon which their town was burned, and their corn destroyed. At this juncture of time, no conduct in him could have been more impolitic, and might well forebode the disastrous conclusion of the first attempt at colonization. After this outrage, Sir Richard sailed to Hatteras, where he was visited by Granganimeo, the prince who had been so friendly to Amidas and Barlow, the preceding year, and who was, on this occasion, accompanied by Manteo. Of what passed between Granganimeo and Grenville at this interview, the journal of the voyage, it is said, gives no account; but it is supposed, that the settlement of the English in the country, at least of the island of Roanoke, was then agreed on between them, to their mutual satisfaction.† Sir Richard then sailed for that island, and having fixed upon it for the site of his settlement, he remained there for the space of six weeks, probably to see the colony somewhat arranged and settled before his departure. The colony

* Mod. Univ. Hist. vol. 39, p. 236. In Burk's Hist. of Virg. vol. 1, p. 53, it is said, that "he narrowly escaped shipwreck on Cape Fear."

† Oldy's Life of Raleigh, cited in Holmes's Annals, vol. 1, p. 119, note 3.

consisted of one hundred and eight men ;* Mr. Ralph Lane, being their governor, and captain Philip Amidas, titular admiral of the country. Thomas Heriot, a celebrated mathematician, and John Wythe, an ingenious painter, were also of the number of these colonists.† Having disposed all things for his departure, Sir Richard set sail for England on the 25th of August. He shaped his course, it seems, so as to keep in view the American continent which lies between Currituck inlet and the Chesapeake ; but nothing is mentioned of any discoveries thereby made by him. He arrived at Plymouth on the 18th of September following, with a rich Spanish prize, which he had taken on the passage. His proceedings appear to have been highly satisfactory to his employers, or what was then called, The new Virginia Company.

SEC. III.
1585.

Soon after the departure of the ships, governor Lane began to make preparation for obtaining a more extensive knowledge of the country. With this view, he proceeded in his boats along the coast to the southward, to the before mentioned Indian town called Secotan, by their reckoning, distant from Roanoke eighty miles. To the north they advanced one hundred and thirty miles, to the Chesapeakes, a nation of Indians seated on a small river, now called Elizabeth, which falls into the great bay of Chesapeake, below Norfolk.‡ To the north-west, they went up Albemarle sound and Chowan river, one hundred and thirty miles, to a nation of Indians called the Chowanocks, in-

* In Robertson's Hist. of America, b. 9, it is said, that there were one hundred and eighty men ; but that is evidently a mistake either in himself or the press, by transposing the figures 108 to 180, or by adding the letter *y* to the word eight. The list, published in Hazard's Collections, vol. 1, p. 38, contains 107 persons, which with governor Lane, would complete the number 108, mentioned by Oldmixon, Harris, and the Mod. Univ. Hist.

† Mr. Heriot wrote a topographical description of this part of Virginia (now called North Carolina,) and its natural history, which is preserved in Hackluyt's Voyages. It was translated into Latin by Theodore de Bry, and published in his collection of voyages. It is said, that the famous French philosopher, Descartes, borrowed much of his light from this excellent mathematician ; and that the learned Dr. Wallis gave his preference to Heriot's improvements before those of Descartes, although the latter had the advantage, of being successor to the former. Mr. Wythe also made several drawings of the figures and dress of the natives, of which copperplates were afterwards taken and published by de Bry in 1590, with Latin explanations of them. Burk's Hist. of Virginia, vol. 1, p. 55.

‡ In the Indian language, the word *Chesapeake* is said to signify, *Mother of Waters*. The obvious application of this name to the great bay so called, would seem to intimate, that this Indian nation must have taken their name from their situation near the Chesapeake bay. See Burk's Hist. of Virginia, Vol. 1, p. 56, who cites Stith.

SEC. III. habiting a little beyond the fork of that river, where one branch
1585. takes the name of Meherrin, and the other of Nottoway. The king of this nation, Menatonon, is represented by the adventurers, to have been shrewd beyond the cunning of any of the Indians they had seen. Having collected from the inquiries of the English, the principal subjects of their search, he amused governor Lane and his company, with the story of a copper mine and a pearl fishery, and with the marvellous description of the source of the Moratuck, now called Roanoke; which he represented as springing out of a rock, so near the sea, that in high winds the surge beat over it. Added to this, there seems to have been at this time a general rumour among the Indians, perhaps designedly propagated by them, of a rich mine, that lay in the interior part of the country high up the Moratuck. Filled with these delusive hopes, the governor now prepared for an expedition up this river, under the full expectation of exploring these advantageous discoveries, and of taking immediate possession of this fancied source of wealth. It is necessary to observe, that Wingina, the Indian king before mentioned, who appears to have been sovereign of the country about the mouth of the Roanoke river, had been always secretly inimical to the English, or to their settling in the country, and was restricted in the exercise of his animosity to them, only by the influence of the friendly Granganimeo his brother. This did not, however, prevent him from injuring them, whenever he could do it with secrecy; and it may be inferred from circumstances, that he acted on this occasion, in concert with Menatonon. Immediately before the English set out upon their expedition, the artful Wingina despatched messengers to the several nations of Indians, who inhabited the banks of the Moratuck, to apprize them of their intended excursion, and to spread amongst them suspicions of the evil views and intentions of the English. Lane pursued his course in boats, up the Moratuck; but, strangely confiding in this treacherous prince, who, the better to deceive him, had furnished him with guides, he had neglected to take any provisions with him, imagining he should be supplied by the natives on each bank. The consequence of which was, that he soon became reduced to extreme difficulties. After rowing four days against a strong current, he found the country wholly deserted and laid waste by the inhabitants. Still, however, in hopes of better fortune, he pursued his course under the auspices of his

guides, until at length they had nothing to subsist on but the flesh of two large dogs, which they were compelled to eat. Their perseverance being now wearied out, they returned to Roanoke island much chagrined and disappointed.*

SEC. III.

1585.

In addition to the foregoing disappointment, they had, on their return, the disagreeable intelligence of the death of prince Granganimeo, which happened during their excursion. While this friendly Indian lived, his influence, supported by the authority of Ensenore, their father, had, as before observed, restrained the animosity of Wingina. It is not difficult to account for this authority of Granganimeo, if we believe that their manner of descent was similar to that of the other tribes of North American Indians. The brother of the reigning chief was heir apparrant, and succeeded to the sovereignty in bar of the children of the chief.† This rule of descent might probably be founded on a very substantial reason, under a government purely military. It would in such case be obviously necessary, that the reigning chief should be capable of discharging the military duties of his station; which an infant or minor, would be incapable of performing. This reason might also apply to an explanation of Wingina's authority as a sovereign during the life of his father, Ensenore; who, now grown old and infirm, and incapable of going into battle with his enemies, might have delegated, if not totally resigned his power into the hands of his eldest son Wingina. Another circumstance, arising on the death of Granganimeo, deserves to be noticed here; it seems to have been a custom, generally prevalent with the Indians of this part of America and Virginia, to change their name, when any extraordinary change took place either in their circumstances or feelings.‡ On this occasion Wingina assumed the name of Pemsapan, the etymology of which had probably some allusion either to the event or its consequences; and by this name alone he is designated by some historians.

*Mod. Univ. Hist. Vol. 39, p. 239. Burk's Hist. of Virginia, Vol. 1, p. 57.

†Burk (Hist. of Virginia, Vol. 1, p. 58,) cites, in support of this, the instance of Powhatan, in Virginia.

‡Burk (Hist. of Virginia, Vol. 1, p. 58,) cites here similar instances among the successors of Powhatan, from Stith's Hist. of Virginia, p. 155. The same or a similar custom prevails with the negroes on the coast of Guinea, or the gold coast, in Africa. They assume an additional name on every remarkable action of their lives, so that the best memory is unable to retain all the names of a man who has been much in action. (See the Mod. Univ. Hist. Vol. 17, p. 104.) May not these additional names, however, be considered as *titles* of nobility as-

SEC. III. During the absence of the governor, it had been reported
 1585. that he and his party were lost; and the little influence, which
 Ensenore, (who upon all occasions, seems to have partaken in
 the friendly sentiments of his son Granganimeo, towards the
 English,) had, with his eldest son Wingina, now called Pemi-
 sapan, seems to have been, upon this report, nearly extinguished.
 Accordingly, Pemisapan was still ever secretly contriving mis-
 chief against them. He had projected a scheme of starving the
 English out of the island Roanoke, by neglecting to plant or
 cultivate it. This scheme, however, seems to have been in
 some measure defeated, by a combination of fortunate circum-
 stances, which took place in the spring of the following year.
 The chiefs of several other nations, had manifested an amicable
 disposition towards governor Lane and his settlers. The king
 of the Chowanocks, though from his former conduct, he must
 still have been a secret enemy, sent a present of pearl to Mr.
 Lane; and Okisko, king of the Weopopomewks, (another
 powerful nation, possessing all that country from Albemarle
 1586. sound and Chowan river, to Chesapeake bay,) in March, 1586,
 came himself, with twenty-four of his principal men, to own
 subjection to the queen of England. The aged and cautious
 Ensenore, induced thereto, perhaps, more zealously by the pa-
 cific conduct of these other chiefs, exerted on this occasion, the
 little influence he had with his son, and prevailed upon him to
 relinquish his schemes, and to plant in corn, a considerable ex-
 tent of ground, both on the island and main land.

This apparent prosperity of the adventurers, added to the
 influence of Ensenore, preserved peace for a short time with
 this savage. But on the death of Ensenore, which happened
 on the twentieth of April, this year, all check on his natural
 disposition being now removed, he meditated a plan for the
 utter extirpation of the colonists. Under pretence of solemniz-
 ing his father's funeral, he issued secret orders to the Indians,
 to rendezvous at a certain place, with intent to fall on the Eng-
 lish with the whole force of the nation. The plot, however,
 previous to the time fixed for its execution, was discovered to
 the English, by their prisoner Skiko, the son of Menatonon.
 An attempt was made to retaliate on the Indians, by seizing

sumed by themselves, or granted by their chiefs, in reference to some great ex-
 ploit? Most of the titles of the Emperor Napoleon's nobility had reference to
 some great military achievement.

their canoes, and thus keeping them in a state of siege on the island; but they took the alarm, and after a loss of six men escaped into the woods. After various stratagems on both sides, Pemisapan was, at last, on the first of June, drawn into an ambush, with eight of his chiefs, and slain.*

SEC. III.
1586.

The colonists now began to be in so much distress, from want of food, that they were under the necessity of dispersing themselves into different parts of the country, in quest of the means of subsistence. It was, in consequence of this, that Captain Stafford, who had, with a small party, been stationed on the southern part of Cape Look-out, to shift for themselves, and to "see if they could spy any sail pass by the coast," sent, on the ninth of June, intelligence to Mr. Lane, that he discovered twenty sail of ships.†

Queen Elizabeth, being now at war with Spain, was advised to attack her settlements in America, and to surprise the Spanish galleons. In prosecution of this scheme, a fleet of twenty sail had been fitted out and placed under the command of Sir Francis Drake. This distinguished naval commander, after many important successes against the Spaniards, in the West Indies and South America, and attacking and reducing Fort St. John's, near St. Augustine's, in Florida, had, according to the special orders of queen Elizabeth, sailed to visit this English colony, and to yield it all possible assistance.‡ Arriving off Cape Look-out, and discovering a distant fire, the admiral sent his skiff ashore with some of his men, who found captain Stafford and his party there, and took them on board their ships. By their direction, the fleet proceeded the next day, to the place which the English colonists made their port; but some of the ships, being of too great draught to enter, anchored about two miles from the shore, "without the harbour in a wilde roade at sea."|| From this place Drake, who had been told that the colony was in distress for want of provisions, sent a letter by captain Stafford to governor Lane, then at his fort on Roanoke island, about six leagues distant, making him an offer of supplies. The next day, Mr. Lane and some of his company

*Burk's Hist. of Virginia, Vol. 1, p. 57, 60. Holmes's Annals, Vol. 1, p. 122.

†Mod. Univ. Hist. Vol. 39, p. 237. Robertson's Hist. of America, (b. 9.) Vol. 4, p. 166. Burk's Hist. of Virginia, Vol. 1, p. 60.

‡Oldmixon's British Empire in America, Vol. 1, p. 214.

||According to the above description of the place where Drake arrived and anchored, it is most probable, that it was what is now called Roanoke inlet.

SEC. III. going on board the fleet, Drake made them two proposals;
 1586. either to leave them a ship, a pinnace, and several boats, with sufficient masters and mariners, furnished with a month's provisions, to stay and make further discovery of the country and coasts, and so much additional provision, as would be sufficient to carry them all to England; or, to give them a passage home in his fleet. The first proposal was gratefully accepted.* A ship was accordingly selected by Drake, and delivered to the colonists; but before the provisions were entirely received on board, there arose a great storm, that continued three days, and endangered the whole fleet. Many cables were broken, and many anchors lost, and some of the ships, of which number was that destined for the use of the colonists, were compelled to put to sea. Drake now generously making the colony an offer of another ship with provisions, or a passage home, governor Lane and the principal persons with him, having considered what was expedient, requested the Admiral, under their hands, that they might have a passage to England. The rest of their company was now sent for: the whole colony was taken on board;† and the fleet, leaving America on the eighteenth of June, arrived on the twenty-eighth of July, at the English harbor of Portsmouth. Thus terminated the first English colony planted in America.

*An observation of Holmes, in his Annals, (Vol. 1, p. 123,) seems to explain this: "The hope, he says, of finding a rich mine in the interior part of the country, which they had already made an attempt to discover, seems to have greatly influenced their wishes to continue longer in Virginia." In support of this, he cites Hackluyt, iii. 255, 263; adding, "The mine is said to be 'notorious' among the Indians, and to lie up the river Moratuck. The narrator in Hackluyt calls it "a marvellous and most strange mineral;" and the narrator adds, "there wanted no great good will, from the most to the least amongst us, to have perfitted this discoverie of the mine: for that the discovery of a good mine, by the goodness of God, or a passage to the South sea, or some way to it, and *nothing else can bring this country in request to be inhabited by our nation.*" I would observe here, that this indicates very strongly the motives to colonization, which existed generally among the first settlers of Virginia.

†The narrator in Hackluyt (according to Holmes's Annals, Vol. 1, p. 122, note 1,) says, that when Drake sent his vessels to Roanoke, to bring away a few persons, who were left there with the baggage, "the weather was so boisterous, and the pinnaces so often on ground, that the most of all we had, with our cards, books, and writings, were by the sailors, cast overboard." This accident may have deprived us of a more full and accurate account of the proceedings and discoveries of this colony, during its year's residence in Virginia, than we otherwise have.

SECTION IV.

Attempts to relieve the first colony under governor Lane—A second colony at the same place under governor White—Sir Walter Raleigh assigns his patent—The whole of the second colony lost—Gosnold's voyage to New England—Sir Walter Raleigh's endeavours to find out the second colony at Roanoke—captain Pring's expedition—captain Bartholomew Gilbert's voyage—captain Weymouth's.

Some writers* think it proper to apologize for Sir Walter Raleigh, on account of the misfortune of the first colony, by observing, that it was not at all owing to any negligence in him; for he continually pressed the company or those concerned with him in interest, to reflect on the necessity of supporting the colony in time; and so solicitous was he in this business, that finding the fleet, which was preparing for that purpose under the command of Sir Richard Grenville, went on but slowly, he proposed that the first ship, that was completely manned and equipped, should be sent without staying for the rest; which was done; but when she arrived at the island of Roanoke, which was within a few days after Drake had departed, they found it deserted. The master of the vessel, not being able to get any information concerning them, returned to England. In a fortnight after this, Sir Richard Grenville arrived with his squadron of three small ships, but to his great disappointment found not a man upon the island. After searching in vain for the colony he had left the year before without being able to learn what had befallen it, he resolved to try the experiment of another settlement, and accordingly placed fifteen men, (some authors say fifty,) on the island. He left them furnished with all necessaries for two years, and gave them the strongest assurances, that they should be constantly and regularly supplied. But this handful of unfortunate men was soon after overpowered and destroyed by the Indians.

Not discouraged by these abortive efforts to plant a colony in America, Sir Walter Raleigh, with a perseverance natural to great minds in arduous undertakings, resolved to attempt at

SEC. IV.

1586.

Attempt to relieve the first colony under Governor Lane.

1587.

A second colony at the same

* Oldmixon's British Empire in America, Vol. 1, p. 214. Harris's Voyages, Vol. 2, p. 202.

SEC. IV. making another settlement. By an indenture of grant bearing date the 7th of January, 29th of Eliz. 1587, (new style) he granted unto John White, and twelve others, (therein mentioned,) "free libertie to carrie with them into the late discovered barbarous land, and countrie, called *Assamacomock*, alias *Wingandacoia*, alias *Virginia*, there to inhabit with them, such and so many of her Majestie's subjects, as shall willingly accompany them, and also divers and sundrie other prerogatives, jurisdictions, royalties and preheminencies."—By this indenture also, it would seem, he constituted a corporation by the name of the governor and assistants of the city of Raleigh in Virginia, "a city intended to be erected and builded in Virginia aforesaid."* Captain John White was made governor, and the twelve assistants formed his council, in whom conjointly were vested the legislative and executive powers for the government of the colony. A small fleet of three ships was fitted out and placed under the command of the governor captain White. About one hundred and seventeen adventurers and settlers, consisting of men, women, and children,† with a plentiful supply of provisions, were embarked on board the fleet. They were directed by Sir Walter to fix their plantation and erect a fort at the bay of Chesapeake, which had been discovered by governor Lane the preceding year. Thus prepared for a permanent settlement, they arrived on the 22d of July, 1587, at Hatteras. The governor, with forty of his best men, went on board the pinnace, intending to pass up to the island of Roanoke, in the hope of finding the fifteen Englishmen, whom Sir Richard Grenville had left there the year before; and, after a conference with them concerning the state of the country and of the Indians, to return to the fleet, and proceed along the coast to the bay of Chesapeake, according to the orders of Raleigh. But no sooner had the pinnace left the ship, than a gentleman, instructed by Fernando, the principal naval commander, who was destined to return soon to England,‡

* See the recital of the Indenture in Sir Walter Raleigh's indenture of assignment, in Hazard's collections, Vol. 1, p. 42.

† See a list of their names in Hazard's Collections, Vol. 1, p. 40. Although these adventurers composed in reality the *third* English colony attempted to be settled in America, counting the before-mentioned fifteen men as one, yet as Robertson and other historians speak of these above under White as the *second* colony sent out, their authority is here followed.

‡ In the Indenture of Jan. 7th, 1587, above-mentioned, (under which this colony was attempted to be planted) mention is made of "Simon Fernando of London," as one of the grantees, and who was probably also one of the twelve as-

called to the sailors on board the pinnace, and charged them not to bring back any of the planters, excepting the governor and two or three others, whom he approved, but to leave them in the island; for the summer, he observed, was far spent, and therefore he would land all the planters in no other place. The sailors on board the pinnace, as well as those on board the ship, having been persuaded by the master to this measure, the governor, judging it best not to contend with them, proceeded to Roanoke. At sunset he landed with his men at that place in the island, where the fifteen men were left; but discovered no signs of them, excepting the bones of one man, whom they supposed to have been killed by the savages. The next day the governor and several of his company went to the north end of the island, where governor Lane had erected his fort, and his men had built several decent dwelling houses, the preceding year; hoping to find here some signs, if not the certain knowledge, of the fifteen men. But, on coming to the place, and finding the fort razed, and all the houses, though standing unhurt, overgrown with weeds and vines, and deer feeding within them, they returned in despair of ever seeing their looked-for countrymen alive. Orders were given the same day for the repair of the houses, and for the erection of new cottages. All the colony, consisting of one hundred and seventeen persons, soon after landed, and began to make the necessary preparations for their accommodation and comfort. It was not long before they were visited by Manteo, the faithful Indian, who had accompanied Amidas and Barlow to England; from whom they received some intelligence of the fate of their countrymen. He informed them, that the natives secretly set upon them, and killed some; the rest fled into the woods.

The colony had now been but a few days on the island, when Mr. Howe, a gentleman who was one of the council, or court of assistants as it was called, was attacked and barbarously murdered by the natives, as he happened to stroll about at a little distance from the fort, which the new planters had repaired or erected. Soon afterwards a party was sent under the command of captain Stafford, accompanied by Manteo, to a place called

assistants or counsellors. His name appears also in the list of colonists, (published in Hazard's Collections, Vol. 1, p. 40,) "who remained to inhabit in Virginia" at this time, they could not therefore be the same persons, but I find it related as above in Holmes's Annals, Vol. 1, p. 125, who probably took it from some authentic writer.

SEC. IV.
1587.

SEC. IV *Croatoan*, which, it seems, was the name of an island, or section of the great sand-beach near Wokoken, as before mentioned.*

1587.

At first the natives seemed determined to oppose the captain's debarkation, but as soon as they heard Manteo's voice, they laid down their arms, and became friends. Next day a conference was held, and the Indians undertook to go to the people of Secotan and Aguasgosack, and persuade them to renew the old friendship between them and the English; and in seven days time they promised to bring their kings and great men to confirm the same at Roanoke. Among other things at that conference they told captain Stafford, that Mr. Howe was killed by the Indians of Dessamenpeake and Roanoke; and that the fifteen men, left by Sir Richard Grenville, had been treacherously surprised by three hundred Indians from Secotan, Aguasgosack, and Dessamenpeake, (in revenge of Wingina's death,†) who had set fire to their dwellings, killed some, and forced the rest to fly in their boats towards Hatteras; where they remained a short time on a small island, and then departed they knew not whither.—The seven days being expired, without any news of the Indians with the chiefs they had promised to bring to Roanoke; and the governor having received particular information from the Croatoans, that Mr. Howe's death was chiefly occasioned by the Indians of Dessamenpeake, who were also principally concerned in driving the English from Roanoke; he determined forthwith to take a proper revenge of these people; and accordingly with captain Stafford and twenty-four men, of whom Manteo was one, he set out on this expedition. Next morning by break of day they landed, and got beyond the Indian houses, and assaulted them as they were sitting round the fire. The miserable creatures fled among the reeds, where one of them was shot through; but the fury of the assailants was soon allayed, when they understood by an Indian woman, and a man who called on captain Stafford by name, and told him that those Indians whom he attacked were his friends of Croatoan, come thither to gather

* According to Williamson, (Hist. of North Carolina, vol. 1, p. 41,) there were two Indian names of two distinct places, similar in sound and differing only in a single letter, to wit: Croatoan and Croatan. The former was situated as above mentioned; but as to the latter he says, "the point of main land, now called Croatan, was called Dasamonquipo;" the same, probably, as mentioned by others under the name of Dessamenpeake. But no place, now called Croatan, nor Dessamenpeake, is designated on any of the common modern maps of North Carolina.

† Burk's Hist. of Virginia, vol. 1, p. 63.

corn, having learned that the Dessamenpeakes, on the death of SEC. IV.
1588. Mr. Howe, had fled from their habitations, and left their corn to be devoured by the birds. The English finding themselves disappointed of their intended revenge, and touched with concern for what had happened to their friends, only gathered what corn was ripe, and left the rest growing for their use. Manteo very justly imputed their misfortune wholly to the Indians, who had not kept their promise in coming to the governor at the time they appointed.*

Two small events about this time, have been thought by historians, worth recording. On the thirteenth of August, Manteo, the friendly Indian, was baptized at Roanoke, according to a previous order of Sir Walter Raleigh; and, in reward of his fidelity and services to the English, the governor created him Lord of Dessamenpeake, the Indian nation before mentioned. And on the eighteenth, Mrs. Dare, a daughter of governor White, and wife of Ananias Dare, (one of the assistants,) was delivered of a daughter at Roanoke, who was baptized on the next Sunday, by the name of Virginia; because she was the first English child born in the country.†

The affairs of the colony seem to have been now considered in so prosperous a way, and the colonists so well pleased with their situation, that when the ships were about to return to England, and it became necessary for some person to return with them in order more speedily to promote further supplies, they all declined, except one, who was judged to be unequal to the office; and the governor, by mere importunity and solicitation, was constrained, much against his wishes, to undertake it.‡ He sailed from Roanoke on the twenty-seventh of August, and arrived in England at a most unfavourable time indeed, for the purposes he had undertaken. He found the nation in universal alarm, at the formidable preparations of Philip II. of Spain, to invade England, and collecting all its force to oppose the fleet, which the Spaniards arrogantly denominated the Invincible Armada. Ra-

* The above account is taken from *Heith's Hist. of Virg.* p. 48, 49. The author of this volume had, in the former account published, followed the *Mod. Univ. Hist.* there cited, but now perceives it to be erroneous. The fate of the fifteen men above mentioned is somewhat differently related, &c. (as in the note published.)

† *Oldmixon's British Empire in America*, vol. 1, p. 215, 216. *Mod. Univ. Hist.* vol. 39, p. 239. *Holmes's Annals*, vol. 1, p. 124. *Burk's Hist. of Virginia*, vol. 1, p. 63.

‡ *Burk's Hist. of Virginia*, vol. 1, p. 64. *Harris's Voyages*, vol. 2, p. 203.

SEC. IV. leigh, Grenville, and all the most zealous patrons of the new
 1588. settlements, were called to act a distinguished part in those measures of defence, which the public danger demanded and rendered indispensable.

Raleigh, however, mingled with his exertions to defend his native country, some attention to the situation of the colony he had planted. Early in the following year he found leisure to fit out for its relief, at Biddeford, a small fleet, the command of which was given to Sir Richard Grenville; but the apprehensions from the Spanish armament still increasing, the ships of force prepared by Raleigh were detained in port, by order of the queen, for the defence of their own country; and Sir Richard Grenville was specially and personally commanded, not to depart out of Cornwall; where his services under Sir Walter Raleigh, who was mustering and training the forces, as lieutenant of the county, were deemed necessary.* Governor White, it seems, was also, at this time, one of the queen's council of war, and was, therefore, by reason of his office, obliged to remain in England.† These patrons of the colony still, however, found means to make some efforts for their relief in this year. Two small pinnaces, in which were fifteen planters, with suitable supplies of provision, were fitted out, and sailed for Virginia. Being more intent on a profitable voyage, than on the relief of the colony, the person or persons under whose direction they were placed, went in chase of prizes; until at length, two men of war from Rochelle, falling in with them, disabled and rifled them, and obliged them to put back for England.‡ Thus the whole year of 1588 elapsed without furnishing the colony with supplies.

1589. Soon after this, the attention of Raleigh being directed to other more splendid objects, he assigned his patent to Thomas Smith, William Sanderson, and several others, merchants and adventurers, whose names are enumerated in the indenture of assignment, bearing date the 7th of March, 31 Eliz. (1589,) making at the same time a donation to the assignees, of one hundred pounds lawful money of England, for the encouragement of their designs.|| Although the Spanish armada had

Sir Walter Raleigh assigns his patent to others.

* Marshall's Life of Washington, vol. 1, p. 18.

† Holmes's Annals, vol. 1, p. 130.

‡ Holmes's Annals, vol. 1, p. 129.

|| See this indenture of assignment at large, in Hazard's Collections, vol. 1, p. 42.

been destroyed in the course of the preceding year, and the nation freed from the alarm of invasion, yet, it seems, that they were as anxiously engaged this year in retaliating on the Spaniards, by an expedition against them; so that difficulties, similar to those of the former year, might have operated to prevent any relief to the unfortunate colonists.

SEC. IV.
1589.

It was not till the year after the assignment, that governor White could go to their assistance. Above two years had now elapsed, since he had left his infant colony, under the full expectation of his speedy return to them. On the 20th of March, 1590, he sailed from Plymouth with three ships; but, taking the usual circuit by the West Indies, he, perhaps undesignedly, suffered himself to be too much delayed in the capturing of Spanish prizes. Having arrived off Roanoke inlet on the 15th of August, they fired some cannon to give notice of their arrival, and sent some men on shore at the place where the colony had been left; but no signs of their countrymen could be found. In attempting the next day, to go to Roanoke, one of the boats in passing a bar, was half filled with water; another upset, and seven men were drowned. This disaster discouraged the other sailors to such a degree, that they all seemed resolved to abandon the research: but by the persuasion and authority of the governor and one of their captains, they resumed it. The governor accordingly, taking with him nineteen men in two boats, went towards the place where he had left the English colony, and found on a tree at the top of the bank, the letters CRO, carved in fair Roman characters. This he knew to be intended to mark the place, where the planters might be found: for they had secretly agreed with him, at his departure for England, to write or carve on the trees or posts of the doors, the name of the place where they should be seated, because they were at that time preparing to remove fifty miles from Roanoke island, into the main land. It had also been agreed, that in case of their distress, they should carve over the letters a cross; but, to the great comfort and encouragement of their English friends, they found not this sign. Coming to the spot where the colony had been left, they found the houses taken down, and the place very strongly inclosed with a high palisade of trees, in the form of a fort with curtains and flankers. At the right side of the entrance, on one of the chief trees or posts, the bark of which had been taken off five feet from the ground, was carved in fair

1590.

The whole of the second colony lost.

SEC. IV. capital letters, CROATOAN, without the sign of distress.*

1590. Within the palisade they found many bars of iron, pigs of lead, iron shot, and other things of bulk and weight, scattered about, and almost overgrown with grass and weeds. In the end of an old trench, they found also, five chests, that had been carefully buried and hid by the planters; three of which governor White recognized as his own, together with many other things of his, spoiled and broken: such as his books torn from their covers, the frames of his pictures and maps rotten and spoiled with rain, and his armour almost eaten through with rust. Concluding from the circumstance of no signal of distress being left, as agreed upon, that the colony was safe at the place thus designated, they returned to their ships, and determined to sail for Croatoan on the next morning. But, a violent storm arising that night, the ships were separated from each other, and having lost their anchors and cables, durst not venture in with the shore. So they all shifted for themselves, and with various fortunes, arrived in England and Ireland.† What became of the unfortunate colonists, whom White had left in 1587, time has never yet developed. From the palisaded fort, it would seem, that they had been either attacked by, or were in much apprehension of danger from the natives before their removal. The Indians of Croatoan, having been always friendly to the English, through the influence of Manteo, who, it seems, belonged to that tribe, and was a native of that place,‡ they were induced, probably by that circumstance, to remove thither. After which no traces of them appear.

1602.
Gosnold's
voyage to
New Eng-
land.

This unfortunate event seems to have chilled the ardour of the English for colonization in America for many succeeding years. It was not until the year 1602, the last year of the reign of Elizabeth, that any voyage of importance was undertaken by them to North America. Some of the Virginia company, probably the most zealous of those to whom Sir Walter Raleigh had assigned his patent, resolved to fit out a vessel for that country, and accordingly made choice of captain Bartholomew Gosnold for the commander thereof, who had been one of the adventurers in a former voyage thither, and was an excellent mariner. He sailed

* Mr. Williamson, in his *Hist. of North Carolina*, vol. 1, p. 60, (published in 1812,) says,—“Part of the works are seen at this day.”

† Oldmixon's *British Empire in America*, vol. 1, p. 217. Holmes's *Annals*, vol. 1, p. 130.

‡ Holmes's *Annals*, vol. 1, p. 131.

from Falmouth on the 26th of March, 1602, in a small vessel, SEC. IV.
 with thirty-two persons on board, of whom it was proposed, that 1602.
 twelve should stay behind and form a settlement, in case he should meet with any place which he should judge convenient for that purpose. Instead of following former navigators in their unnecessary circuit by the West India isles and the Gulf of Florida, Gosnold steered due west, as nearly as the winds would permit, and is said to be the first English commander, who reached America by this shorter and more direct course.* He arrived on the 11th of May in nearly forty-three degrees of north latitude on the coast of Massachusetts. Here they met with a shallop with a mast and sails, having on board eight Indians, with whom the English had friendly intercourse.† Sailing along the shore they the next day discovered a headland in the latitude of forty-two degrees, where they came to anchor; and, taking a great number of cod-fish at this place, they called it Cape Cod, a name it still retains, holding their course along the coast as it stretched toward the south-west they discovered, on the twenty-first of May, an island, which they called Martha's Vineyard: not that, it seems, which now bears that name, but a small island now called Noman's Land. Coming to anchor, two days afterwards, at the north-west part of the island, they were visited the next morning by thirteen of the natives, with whom they had a friendly traffic. On the twenty-fourth they discovered another island, which they named Dover Cliff, now called Gay Head; and the next day came to anchor at a quarter of a mile from the shore, in a large bay, which they called Gosnold's Hope, which is said to be the same as that now called Buzzard's Bay. On

* Although Robertson, and other historians after him, have observed as above, that Gosnold was the first English commander who sailed to America by this shorter course, yet, unless it be understood of that part of America then called Virginia, it cannot well be admitted. For undoubtedly Cabot, (who, though not an Englishman, yet sailed under English colours and with English seamen,) and all those, who had previously visited Newfoundland, particularly Sir Humphrey Gilbert, sailed this shorter and direct course.

† These natives first hailed the English; who answered them. After signs of peace, and a long speech made by one of the Indians, they went boldly on board the English vessel, "all naked," saving loose deer skins about their shoulders, "and neer their wastes seal skins tyed faste like to Irish dimmie trowses." One of them, who seemed to be their chief, wore a waistcoat, breeches, cloth-stockings, shoes, and a hat; one or two others had a few things of European fabric; and "these with a piece of chalke described the coast thereabouts, and could name Placentia of the Newfoundland; they spake divers christian words." Their vessel is supposed to have belonged to some unfortunate fishermen of Biscay, wrecked on the coast. Holmes's Annals, vol. 1, p. 142.

SEC. IV. the northern side of this bay was the main land ; and on the
 1603. southern, four leagues distant, was a large island, which, in honour of the queen, they called Elizabeth. On the twenty-eighth they consulted together upon a fit place for a plantation ; and concluded to settle on the western part of Elizabeth island. In this island there is a pond or lake of fresh water, two miles in circumference, in the centre of which is a small rocky islet of about an acre of ground, and on this islet they began to erect a fort and store-house. While the men were occupied in this work, Gosnold crossed the bay in his vessel ; went on shore ; trafficked amicably with the natives ; and having discovered the mouths of two rivers, supposed to be the two harbours of Apooneganset and Pascamanset, on one of which the town of New Bedford is now built, in the southern part of the State of Massachusetts, returned in five days to the island. In nineteen days the fort and store-house were finished ; but discontents arising among those who were to have remained in the country, it was concluded, after deliberate consultation, to relinquish the design of a settlement. Having loaded their ship with a cargo of sassafras and cedar wood, furs, and some other commodities of the country, sufficient to indemnify the charges of the expedition, they set sail for England. The whole company, having left their little fort on the 18th of June, arrived at Plymouth the 23d of July following.*

Sir Walter
 Raleigh's
 endeavors
 to find out
 the second
 colony at
 Roanoke.

It would be doing great injustice to Sir Walter Raleigh to omit an event, appertaining to this year, which displays both his sense of honour and humanity in a very conspicuous point of view. Uneasy, as he manifestly appears to have been, at the abandonment of the colony left at Roanoke in 1587, and which had been sent there under his auspices, he had sent vessels four different times prior to the present instance, at his own charges, for their relief ; but these had returned without doing any thing effectual ; some having followed their own profit, and others returned with frivolous excuses. Still not abandoning all hope

* Harris's Voyages, vol. 2, p. 219. Modern Universal History, vol. 39, p. 240. Holmes's Annals, vol. 1, p. 143. The following note from Holmes's Annals, *ibid*, may perhaps gratify the curious. In 1797 the reverend Dr. Belknap with several other gentlemen went to the spot, which was selected by Gosnold's company on Elizabeth Island, and had the supreme satisfaction to find the cellar of Gosnold's store-house : the stones of which were evidently taken from the neighbouring beach ; the rocks of the islet being less moveable, and lying in ledges." Belknap's Biog. ii. 115.

of finding them, he resolved to make one effort more to discover and relieve them. Having accordingly purchased and fitted out a bark for that purpose, he gave command of her to Samuel Mace, an able mariner and an honest, sober man, who had been at Virginia (North Carolina) twice before. He sailed from Weymouth in March, 1602, and fell on the American coast, in about the thirty-fourth degree of north latitude; spent a month there; proceeded along the coast; but returned home without any thorough attempt to effectuate the purpose of the voyage. They offered an excuse, either real or pretended, that the extremity of weather and the loss of some ground tackle forced and deterred them from seeking the port of Hatteras.*

SEC. IV.
1602.

The voyage of Gosnold, however inconsiderable it may appear, is said to have had important effects. He had found a healthy climate, a rich soil, and good harbours, far to the north of the place where the English had attempted to make a settlement. Its distance from England was diminished, almost a third part, by the new course he had pointed out. The pacific reign of James had now succeeded to that of Elizabeth, whose government, as well from her parsimony, as from the happy content of her subjects under it, had not been favourable to colonization. In addition to which, the frequent wars with Spain, which had afforded her subjects such constant employment, and presented to them such alluring prospects both of fame and wealth, having now ceased under James, persons of high rank and ardent ambition became impatient to find some exercise for their activity and talents. New plans for establishing colonies in America were the result. Under all these circumstances, the reverend Mr. Richard Hackluyt, a prebendary of the cathedral of Westminster, (to whom England is said to have been more indebted for its American possessions than to any other man of that age, and whose valuable collection of voyages and discoveries, published by him in the year 1589, diffused a relish among his countrymen for the sciences of geography and navigation,) was induced to project a scheme for sending in the year 1603, a small fleet on a voyage, similar to that of Gosnold's, and prevailed upon several gentlemen and merchants of Bristol to embrace and join in the undertaking.† Previous to any preparations for

1603.

Captain
Pring's ex-
pedition.

* Harris's Voyages, Vol. 2, p. 219, 220.

† It is said in Harris's Voyages, vol. 2, p. 222, that Mr. Hackluyt "had a prebend in the cathedral of Bristol," and in the Modern Universal History, vol. 39, p. 240, that he was "a Prebendary in the cathedral of Bristol." This corres-

SEC. IV. this purpose, it is said to have been deemed by them necessary
 1603. to apply to Sir Walter Raleigh, who was still looked upon as the proprietor of Virginia, in order to procure his licence. On Mr. Hackluyt's application to Sir Walter, they received all the encouragement they could desire; for he not only granted them a licence under his hand and seal, but also made over to them all the profits which should arise from the voyage. After they were thus empowered, they raised a joint stock of a thousand pounds, and fitted out two small vessels, the one called the *Speedwell*, commanded by captain Martin Pring, of the burthen of fifty tons, with thirty men and boys; the other a bark of 26 tons, called the *Discoverer*, commanded by Mr. William Brown, who had under him a mate and eleven men, and a boy.* These vessels were victualled for eight months, and had a large cargo on board, consisting of all sorts of goods that were deemed proper for barter in that country. They sailed from King's Road, near Bristol, on the 20th of March, 1602-3. Being hindered by contrary winds, they put into Milford Haven, where they continued till the 10th of April following, and then proceeded on their voyage. They did not pursue the short route, which Gosnold took, but went by the Azores, and arrived without any remarkable accident, in the beginning of June, on the coast of North America, between the forty-third and forty-fourth degrees of north latitude, among a multitude of islands, in the mouth of Penobscot bay. Ranging the coast to the south-west, and passing the Saco, Kennebunk, York, and Piscataqua rivers, they proceeded into the bay of Massachusetts. They went on shore here, but not finding any sassafras-wood, the collection of which was a great object of their voyage, they coasted further along, till they entered a large sound, supposed to be what is now called the Vineyard sound, and came to an anchor on the north side of it. Here they landed at an excellent harbour in a bay, which, in honour of the mayor of Bristol, they called Whitson bay; mentioned to be in about forty-one degrees and some few minutes north latitude. Having built a hut, and inclosed it with a bar-

ponds with his influence with the Bristol merchants. He is however styled, "Prebendary of Westminster," in the first Virginia charter of 1606, and by Robertson. He might, perhaps, have had a prebend in both cathedrals at different times.

* These vessels appear very small to us at this day for such long voyages; but, according to Hume, such was the mode of building them at that time. See his Appendix to queen Elizabeth's reign.

ricade, some of them kept constant guard in it, while others were employed in collecting sassafras in the woods. The natives came and trafficked with them, forty or fifty in a company, and sometimes upward of an hundred, and would eat and drink, and be merry with them. Observing a lad in the company, playing upon a guitar, they seemed much pleased at it, got round about him, and taking hands, danced twenty or thirty in a ring, after their manner. It was observed, that they were more afraid of two mastiff dogs, which the English had with them, than of twenty men ; so that when our voyagers wished to get rid of their company, they let loose one of these mastiffs, upon which the natives would immediately shriek out, and run away to the woods. After remaining here about seven weeks, the bark was despatched, well freighted with sassafras, for England. Soon after her departure, some alarming appearances of hostility began to be manifested on the part of the Indians ; which might, probably, be owing to the above mentioned improper conduct towards them, as well as the erecting a fortification in their country ; for not long afterwards, when most of the men were absent from the fort, a large party of Indians came and surrounded it, and would probably have surprised it, if the captain of the ship had not fired two guns, and alarmed the workmen in the woods. This induced them to accelerate the lading and departure of the ship, for which they had procured a very valuable cargo of skins and furs, in exchange for the commodities which they had bartered with the Indians. Amongst the curiosities which they brought back with them, was a canoe, or boat used by the inhabitants, made of the bark of the birch tree, sewed together with twigs, the seams covered with rosin and turpentine ; and though it was seventeen feet long, four broad, and capable of carrying nine persons, it did not weigh sixty pounds. These boats the inhabitants rowed, or rather paddled, with two wooden instruments, similar to baker's peels, by which they went at a great rate. On the day before the embarkation of the English, an incident occurred, which seemed to confirm the suspected hostility of the natives. They came in great numbers to the woods where the English had cut the sassafras, and set fire to it ; which seemed to be designed to let them know, that they would preserve nothing in their country, which should invite such guests to visit them again. On the ninth of August our voyagers quitted the coast, and sailed for England, arriving in the mouth of

SEC. IV.

1603.

SEC. IV. the Bristol channel in five weeks ; but meeting there with contrary winds, they could not reach King's road before the second of October : and they had the satisfaction of finding that their bark was safely arrived a fortnight before them.*

1603.

Captain
Bartholo-
mew Gil-
bert's voy-
age.

In the same year also, and while Pring was employed in this voyage, captain Bartholomew Gilbert, who had been the year before with captain Gosnold, was sent by some merchants of London, on a further discovery, to the southern part of Virginia ; it being intended also, that he should search for the lost English colony. Sailing from Plymouth on the tenth of May, in a bark of fifty tons, by the way of the West Indies, where they made a short stay, they arrived on the 25th of July, off the Capes of Chesapeake bay, which Gilbert was very desirous of entering ; but the wind blowing hard, with a high sea, though they beat about for two or three days, they could not get in, and were obliged to bear away to the eastward. On the twenty-ninth they anchored about a mile from the shore ; and the captain, with four of his best men and two lads, landed in their boat. Being provided with arms, he and his men marched some short distance up into the country : but, in their march, they were set upon and overpowered by the natives, and all killed ; and it was not without difficulty, that the two young men who were left with the boat, could reach the ship again to bring the news. They being now, in all, but eleven men and boys in the ship, were afraid to venture the loss of any more of their small company ; and their provisions growing short, the master, Henry Sute, who had taken the command, resolved, though they were in extreme want of wood and water, to return homewards ; which they did, and arrived in the river Thames about the end of September.†

* Harris's Voyages, vol. 2, p. 222. Mod. Univ. Hist. Vol. 39, p. 240. Holmes's Annals, vol. 1, p. 145.

† Harris's Voyages, Vol. 2, p. 223. Holmes's Annals, Vol. 1, p. 146. The above account of Gilbert's voyage is extracted from Harris's Voyages, with which Holmes's Annals correspond. But it may be proper to be informed, that Oldmixon in his British Empire in America, Vol. 1, p. 219, gives a different relation of this expedition. He says, that "Gilbert proceeded from the Caribbee islands to the bay of Chesapeake, in Virginia, *being the first that sailed up into it, and landed there.* The Indians set upon him and his company in the woods ; and captain Gilbert and four or five of his men, were killed by their arrows : upon which his crew returned home." But, as the above mentioned collection of voyages by Harris, is not only posterior in time, but also rather a more authentic work than Oldmixon's, the narration of the former is here adopted in the text. There is an obscurity, however, in Harris's account of it as to the *place* where Gil-

The pacific disposition of king James, and his inexperience SEC. IV.
 in the usage and law of nations, had induced him to suppose, that by his mere accession to the throne of England, peace was thereby restored between England and Spain, he having been always before, as king of Scotland, in amity with Spain. He had on the 23d of June, 1603, before any terms of peace were concerted, or even proposed by Spain, recalled all the letters of marque that had been granted by Elizabeth against the nation; and, although a sort of peace actually existed between Spain and England from the commencement of his reign, yet it was not until the 18th of August, 1604, that the treaty of peace was signed between the two nations.* This event removed many of the obstacles that stood in the way of the British trade, and opened to their ships a free access to many countries, to which they had not before resorted. The old passion for the discovery of a north-west passage, now revived again in its full vigour. With a view to this discovery, two noblemen of the highest rank and influence in the kingdom, were induced to send out a ship under the command of captain George Weymouth. Writers who have mentioned this voyage, differ so widely, and give such contradictory accounts of it, that it has become scarcely entitled to notice. It seems that they sailed on the last day of May, 1605, from Dartmouth, (some say, from the Downs,) and met with nothing of consequence, till such time as they judged themselves to be very near the coast of what was then called Virginia; but the winds carrying them to the northward, in the latitude of $41^{\circ} 30'$, and their wood and water beginning to grow extremely short, they became very desirous of seeing land. By their charts they had reason to expect it, and therefore bore directly in with it, according to their instructions, yet they found none in a run of almost 50 leagues. After running this distance they discovered several islands, on one of which they landed, and called it St. George.† Within

1604.

1605.

Captain
Wey-
mouth's
voyage.

bert was killed. As only a day or two intervened between his quitting the capes of Chesapeake and the time of his landing, it would seem that it could not be higher to the north-eastward than the Hudson's river. More probably, however, some where along the sea-coast of Maryland, or state of Delaware.

* Hume's Hist. of Eng. end of ch. 45, in James I. reign.

† In Harris's Voyages, Vol. 2, p. 223, this island is said to be that which is now called Long island, near New York. But if they bore directly in for the land when they were in $40^{\circ} 30'$ latitude, as said above, they would most probably make it in the same parallel; and the island, which they called St. George would then probably be Nantucket, or Martha's Vineyard. The improbability

SEC. IV. three leagues of this island, they came into a harbour, which
 1605. they called Pentecost harbour, because it was about Whitsuntide they discovered it.* They then sailed up a great river forty miles;† set up crosses in several places, and had some traffick with the natives. In July they returned to England, carrying with them five Indians; one a Sagamore, and three others of them, persons of distinction, whom they had taken as prisoners.‡

of their being able to ascertain, during their short stay, whether Long island was an island or part of the main land, opposes the idea, that the island, which they called St. George, was Long island.

* In the Mod. Univ. Hist. vol. 39, p. 240, this harbour is said to be the mouth of Hudson's river. But if the island just before mentioned be either Nantucket or Martha's Vineyard, and the harbour which they called Pentecost, was "within three leagues of the island," it must have been some harbour on the southern coast of Massachusetts, near to those islands.

† In the Mod. Univ. Hist. vol. 39, p. 240, this river is supposed to be the Hudson, which supposition corresponds with that of the island which they called St. George, being Long island. It is proper to mention two other suppositions very widely different. Dr. Belknap (in his Amer. Biog. ii. 149) is satisfied, that it was the Penobscot in Maine, and Oldmixon (Brit. Emp. in Amer. vol. 1, p. 220) seems as certain, that it was "the river Powhatan, southward of the bay of Chesapeake," now called James river, in Virginia. *In medio tutissimus ibis*, may be here adopted; and it seems not too hazardous to conclude, (though such conclusion may be denominated mere conjecture from circumstances) that the island, they called St. George, might be Martha's Vineyard, Pentecost harbor—Buzzard's bay, and the *great* river up which they sailed forty miles,"—Long island sound. The shallowness of the Connecticut river at its mouth, and the narrowness of it "forty miles up," would seem to preclude a supposition of that being the river meant by the voyagers: though this has been supposed by Beverly, in his Hist. of Virg. (B. 1, ch. 1, sec. 12,) yet, in his preface to that work, (edition of 1722,) out of contradiction to Oldmixon, with whom he had a personal quarrel in England, he observes, that capt. Weymouth's voyage was only to Hudson's river.

‡ See Harris's Voyages, vol. 2, p. 223. Holmes's Annals, vol. 1, p. 150.

SECTION V.

The progress of the French in settling colonies in America—A settlement of convicts on the Isle of Sables, by the French—Chauvin's voyages to the St. Lawrence—Pontgrave's voyage to the same—The Sieur de Mont's commission, and voyages under it—His patent revoked—Pontrincourt's endeavours to fix a settlement at Port Royal, Nova Scotia—The Sieur de Mont obtains a restoration of his grant—and establishes the first permanent colony in Canada, under the conduct of Champlain.

The connection which necessarily subsists between the events attending the early settlements of the French in Acadia, now called Nova Scotia, and Canada, and those of the former British colonies in North America, must apologise for a short digression here, in taking a cursory notice of the early progress of those French settlements. In doing this it will be necessary to carry the attention of the reader a few years back.

SECT. V.

1598.

The progress of the French in settling colonies in North America.

That great and good monarch, Henry IV. of France, (having acceded to the throne of that kingdom in the year 1589,) as soon as he had defeated his enemies, the Guise faction, and obtained quiet possession of the crown, with a liberality of mind, which always marked his character, issued his edict of the 4th of July, 1590, whereby he revoked those extorted from his predecessor by the Leaguers, and established religious liberty of conscience throughout his dominions. A restless disposition, however, which appears to have too much attended the conduct of the Hugonots or Protestants of France, throughout their unhappy civil wars of the sixteenth century, did not permit them to rest quiet with these concessions of Henry.* Indeed, as he had been a Protestant and one of their leaders, and had obtained the crown principally by their means, they might naturally look up to him for greater favours than a mere toleration. Be this as it may, he thought it proper to yield to the importunities of their deputies, who had for that purpose waited upon him at Nantz, where he then was, by issuing another edict, bearing date the 13th of April, 1598, since well known and celebrated in history under the emphatic denomination of "The Edict of Nantz;"

* The Hugonots, or Protestants of France, are said to have been at this time, about a twelfth part of the nation.—Voltaire's Age of Lewis XIV. vol. 2, p. 183.

SECT. V. the revocation of which by Louis XIV., in the year 1685, is said to have been productive of much mischief to France for many succeeding years. By this edict of Henry, the Protestants were not only restored to the free enjoyment of their religion, and a safe protection in their civil rights by the establishment of particular tribunals of justice for them, but they were also advanced to an almost equal share of political liberty, by a free admission to all employments of trust, profit, and honour in the state.*

A settle-
ment of
convicts
on the isle
of Sables,
by the
French.

France, having thus recovered some tranquility after fifty years of internal commotion since her last attempts at colonization in 1549,† was now enabled to exercise again, the enterprizing talents of her citizens. In the same year in which the Protestants obtained from Henry the edict of Nantes, (1598,) the Marquis de la Roche, a Breton gentleman, receiving from the king a commission to conquer Canada, and other countries, not possessed by any christian prince, sailed from France, in quality of lord-lieutenant of those countries, taking with him a person of the name of Chetodel, of Normandy, for his pilot. The marquis, having most absurdly pitched upon the isle of Sables, (which lies about fifty leagues to the south-east of Cape Breton, is about ten leagues in circumference, and is itself a mere sand-bank,) as a proper place for a settlement, left there about forty malefactors, the refuse of the French jails.‡ The history of those poor wretches, contains the history of the expedition. The marquis, after cruising for some time on the coast of Nova Scotia, returned to France, without being able to carry them off the miserable island; and is said to have died of grief for having lost all his interest at that court. As for his wretched colony, they must all have perished, had not a French ship been wrecked upon the island, and a few sheep driven upon it at the same time. With the boards of the wreck they erected huts; with the sheep, they supported nature: and when they had eat them up, they lived on fish. Their clothes wearing out, they made coats of seal's skins; and in this miserable condition, they spent seven years, till Henry IV. ordered Chetodel to go and bring them back to France. Chetodel found only twelve of them alive; and when he returned, Henry had the curiosity to

* Mod. Univ. Hist. vol. 24, p. 334, 342, 377.

† See before, p. 38.

‡ See a like colony of convicts authorized by the commission to Quartier, before mentioned, and referred to in a note in p. 37.

see them in their seal-skin dresses. Their appearance moved this generous and humane monarch so much, that he ordered them a general pardon for their offences, and gave each of them fifty crowns to begin the world with anew.*

SECT. V.

1598.

Though la Roche's patent had been very ample and exclusive, yet private adventurers still continued to trade to the river St. Lawrence, without any notice being taken of them by the government. Amongst others was one Pontgravé, a merchant of St. Malo, who had made several trading voyages for furs, to Tadoussac.† Upon the death of the Marquis de la Roche, his patent was renewed in favour of Mons. de Chauvin, a commander in the French navy, who put himself under the direction of Pontgravé; as the latter might justly be supposed, from his frequent trading voyages to that country, to have acquired a considerable knowledge of it. In the year 1600, Chauvin, attended by Pontgravé, made a voyage to Tadoussac, where he left some of his people, and returned with a very profitable quantity of furs to France. These people, whom he left, would have perished by hunger or disease, during the following winter, but for the compassion of the natives. Chauvin, in the next year, (1601,) made a second voyage with the same good fortune as the first, and sailed up the St. Lawrence as high as Trois Rivières; but while preparing for a third voyage, (in the year after,) he died.

1600.

Chauvin's
voyages to
the St.
Lawrence.

The many specimens of profit to be made by the Canadian trade, led the public to think favourably of it. M. de Chatte, the governor of Dieppe, succeeded Chauvin as governor of Canada. De Chatte's scheme seems to have been, to have carried on that trade with France, by a company of Rouen merchants and adventurers. An armament for this purpose, was accordingly equipped, and the command of it given to Pontgravé, with powers to extend his discoveries up the river St. Lawrence. Pontgravé, with his squadron, sailed in 1603, having in his company Samuel Champlain, afterwards the famous founder of Quebec, who had been a captain in the navy, and was a man of talents and enterprise. Arriving at Tadoussac, they left their ships there, and in a long-boat they proceeded up the river as far as the falls of St. Louis, and then returned to France.

1603.

Pont-
grave's
voyage up
the St.
Lawrence.

* Mod. Univ. Hist. vol. 39, p. 408.

† Tadoussac is a town, or place, at the mouth of the Saguenay, a small river emptying into the St. Lawrence from the north, considerably below Quebec, and ninety leagues from the mouth of the St. Lawrence.

SECT. V.

1603.

The Sieur
de Mont's
commis-
sion, and
voyages
under it.

While Pontgravé was engaged in this voyage of 1603, De Chatte died, and was succeeded in his patent by Pierre du Gast, Sieur de Monts, styled in the king's commission to him, "gentilhomme ordinaire de notre chambre." The tenor of his letters patent, (as we have it at large in Hazard's Collections, vol. 1, p. 45,) bearing date November 8th, 1603, appears to have been as well for colonizing the country then called Acadié, (which comprehended Canada, as well as what is now called Nova Scotia,) as for encouraging the fur-trade carried on there. A difference of opinion is said to have taken place, on the occasion of granting these letters patent, between king Henry and his very able minister, the duke of Sully. The duke declared roundly, that all settlements in America above the fortieth degree of north latitude, could be of no utility; and that all pretended advantages insisted upon in their favour, were but so many commercial chimeras. Here again, (observes the historian,*) the monarch was right and the minister wrong, as we know by experience. By these letters patent, the Sieur de Monts was constituted and appointed the king's lieutenant-general, to represent his person, in the country, territory, coasts, and confines of Acadié, from the fortieth degree of north latitude to the forty-sixth. The extent of this portion of the continent was, from that part of the coast of New Jersey, in the latitude of Philadelphia, to the northern extremity of Cape Breton. Had the Sieur de Monts fixed his settlement or colony, at this time, on that part of the continent as low as, or near to the fortieth degree, which he might have done, the country being then unsettled by any Europeans, and entirely open to him, very different indeed might have been the present situation of affairs in North America. But it is probable, that as all northern furs are said to be much better than those of a southern climate, the French found greater profits from that trade in Canada, than the English did from the southern part of the continent, which they were at this time exploring. The Sieur de Monts, was therefore, soon enabled to form a company under his patent, more considerable than any that had yet undertaken that trade. For their further encouragement, it seems, the king, soon after the former patent to the Sieur de Monts, granted also to him and his associates, an exclusive right to the commerce of peltry in Acadié, and the Gulf of St. Lawrence. Thus encouraged, they fitted out four ships.

* Mod. Univ. Hist. vol. 24, p. 406.

De Monts, in person, took the command of two of them, and was attended by Champlain, and a gentleman called Pontreincourt, with a number of volunteer adventurers.* Another of the ships was destined to carry on the fur trade at Tadoussac; and the fourth was given to Pontgravé, who was ordered, after touching at Canso, (the eastern extremity of Nova Scotia) to scour the sea between Cape Breton and St. John's islands, and to clear it of all interlopers. SECT. V.
1604.

De Monts, with his two ships, sailed from Havre de Grace on the 7th of March, 1604, and after a passage of only one month, arrived at Cap de la Hève, in Nova Scotia. In a harbour very near this cape, to the south-west, he met with an interloping vessel, commanded by one Rossignol, a Frenchman, who was trading there with the Indians without license; for which reason he seized his ship and cargo, and called the harbour Port Rossignol. Coasting thence further to the south-west, he arrived at another haven, which his people named Port Mutton, on account of a sheep which either leaped or tumbled overboard here, and was drowned. From this port they coasted to the peninsula to the south-west; doubled cape Sable, and came to anchor in the bay of St. Mary. They afterwards proceeded to examine an extensive bay on the north-west of the peninsula, to which they gave the name of La Baye Francois, but which is now called the bay of Fundy. On the south-eastern side of this bay they discovered a narrow strait, into which they entered, and soon found themselves in a spacious bason, environed with hills, and bordered with fertile meadows. Pontreincourt was so delighted with this place, that he determined to make it his re-

* Some were Protestants and some Catholics. De Monts himself was a Calvinist; but the king allowed him and his people the exercise of their religion in America. A passage is cited in Holmes's Annals, vol. 1, p. 147, from Charlevoix, wherein it is said, that De Monts engaged on his part, to establish the Catholic religion among the natives. But the original letters patent, as in Hazard's Collections, above cited, do not warrant this assertion; and it is not probable, from the well known character of Henry, that any such stipulation was made by verbal agreement. It is true, that in the preamble of the letters patent, Henry sets forth his resolution, (as was usual in the first planting of America, both North and South,) to cause the native inhabitants of that country to be converted, "au Christianisme et en la créance et profession de *notre* foi et religion." But this seems to be explained further along in the letters, where he authorizes De Monts, "les (peuples) appeler, faire instruire, provoquer et emouvoir á la connoissance de Dieu et á la lumiere de la *foi et religion chretienne*." It is not impossible, but that Charlevoix, being of the order of Jesuits, might very dexterously suppose, that the *Christian* religion could mean nothing else than the *Catholic* religion, and so set it down.

SECT. V. sidence, and proposed to send for his family, and settle there.

1604. Upon which De Monts, in virtue of his commission, made him a grant of it; and Pontrincourt gave it the name of Port Royal, which grant was afterwards, in the year 1607, confirmed to him by Henry IV. It has since been known by the name of Annapolis Royal. From Port Royal or Annapolis, De Monts sailed still further up the Bay of Fundy, in search of a copper mine, then said to lie at the head of that bay. While De Monts was thus engaged in his coasting voyage, Champlain, who had been despatched in a long-boat, immediately after their arrival at Cap de la Hève, to search for a proper place for a settlement, in examining the Bay of Fundy, pursuant to the instructions of De Monts, came to a large river on the north-west side of the bay, which he called St. John's, originally called by the natives Ouygondy. From this river, Champlain coasted the bay south-westwardly twenty leagues, until he came to another river, in exploring which he met with a small island, in the middle of that river, and about half a league in circumference, to which he gave the name of *L'Isle de St. Croix*. This island he deemed to be a proper situation on which they might begin a settlement. He was soon followed thither by De Monts, who resolved to build a fort, and pass the winter there. This they did, but from their account they must have endured great hardships. The insular situation of the settlement precluded them from many advantages. When the winter came on, which was said to have been severe, they found themselves without fresh water, without wood for firing, and without fresh provisions. These inconveniences soon filled the little colony with diseases, particularly the scurvy. By the ensuing spring thirty-six of the colonists had died, and forty of them only were left alive. These considerations determined De Monts to remove his colony across the bay to Port Royal. The buildings at St. Croix were left standing,* but all the stores, &c., were removed. New houses

* The river in which *L'isle de St. Croix* lies, is called the Scoodich, which was the original name given it by the natives, but it is also called the St. Croix; and being part of the boundary between the territory of the United States and the British province of New Brunswick, it has become a stream of considerable importance. After the treaty of 1783, by which the river St. Croix was made a boundary, it became a question which was the real St. Croix; whether the river known by the name of Scoodich, or that known by the name of Magaguadavick. It has, however, been satisfactorily determined, by commissioners appointed for that purpose, that the Scoodich is the river, originally named St. Croix, and the line has been settled accordingly. Professor Webber, who accom-

were erected at the mouth of the river L'Equille, which empties SECT. V.
 itself into the basin of Port Royal, and here the people and 1605.
 stores were lodged. These incidents, however, induced De
 Monts to look out for a more comfortable situation in a warmer
 climate. With that view he sailed southwardly along the coast
 to Penobscot, Kennebec, Casco, Saco, and ultimately to Male-
 barre, which was at that time the French name of Cape Cod.
 He explored divers of these rivers, bays, and harbours; particu-
 larly the Kennebec, up which he went a considerable distance.
 But the natives appearing numerous and unfriendly, and his com-
 pany being small, he returned to St. Croix, and then to Port
 Royal, where he found Pontgravé, in a ship from France, with
 supplies, and a reinforcement of forty men. Having put his af-
 fairs into good order, he embarked for France in September,
 1605, leaving Pontgravé as his lieutenant, with Champlain and
 Champelore, to perfect the settlement and explore the country.

M. de Monts, on his arrival in France, found, that endeavours His patent
revoked.
 had been made to prepossess the French court against his views.
 The masters of the fishing vessels, who frequented the coast of
 of Acadié and the Gulf of St. Lawrence, which fishery is said
 to have been the best trade the French then had, represented to
 the ministry, that De Monts, on pretence of preventing the fur
 trade with the natives, to which by his patent he had an exclu-
 sive right, kept them from the necessaries fit for fishing, and that
 they were upon the point of abandoning the fisheries. They suc-
 ceeded so far that De Monts's patent was revoked. This did
 not, however, entirely discourage him. He entered into new
 engagements with Pontrincourt, who was then likewise in
 France.

Pontrincourt sailed again for America, in the year 1606, in an 1606.
 armed vessel from Rochelle. The colony which had been left Pontrin-
court's en-
deavours
to fix a set-
tlement at
Port Royal
Nova Sco-
tia.
 at Port Royal under the care of Pontgravé, was, by the time of
 the arrival of Pontrincourt off Cape Canso, reduced to such dif-
 ficulties that Pontgrave was obliged to re-embark all the inhabi-
 tants but two, whom he left to take care of the effects he could

panied the commissioners in 1793, informed Mr. Holmes, that they found an
 island in this river, corresponding to the French descriptions of the island St.
 Croix, and near the upper end of it, the remains of a very ancient fortification,
 overgrown with large trees, that the foundation stones were traced to a conside-
 rable extent; and that bricks (a specimen of which he showed Mr. Holmes,)
 were found there. There is no doubt that these were the reliques of De Monts's
 fortification. Holmes's Annals, vol. I, p. 149.

SECT. V. not carry off. However, before he got out of the Bay of Fundy he heard of Pontrincourt's arrival at Canso, upon which he returned to Port Royal, where, about the same time, Pontrincourt arrived. The relief which Pontrincourt brought to this infant colony, came so seasonably, that it again held up its head; but its prosperity is said to have been in a great measure owing to the spirit and abilities of Le Carbot, a French lawyer, who, partly from friendship to Pontrincourt, and partly through curiosity, had accompanied him in this voyage. It would seem also, that about this time Pontgravé, said to be the ablest man by far of any concerned in these projected settlements, resigned his command.

1607. In the next year, 1607, Pontrincourt returned to France, and the king, induced probably by his favourable representations of the country, either confirmed or regranted to the Sieur De Monts his former exclusive privilege for the fur trade with the natives, for the purpose, as it is said, of enabling him to establish his colonies in New France. De Monts, accordingly sent over, in the year 1608, three ships with families, to commence a permanent settlement. Champlain, who took the charge of conducting this colony, after examining all the most eligible places for settlement in Acadie, and the river St. Lawrence, selected a spot at the confluence of this river and the St. Charles, another small river emptying into the former, about three hundred and twenty miles up the river St. Lawrence, from the sea. Here, on the third of July, 1608, he began to erect barracks for lodgings for his people, and to clear the ground, which he sowed with wheat and rye, and on this spot laid the foundation of Quebec, the present capital of Canada.* The succeeding events relative to Acadie and Canada, appertain to the histories of those countries. It is now our business to return to the last successful attempts of the English at colonization.

1607.
The Sieur
de Monts
obtains a
restoration
of his
grant.

1608.
And estab-
lishes the
first per-
manent co-
lony in
Canada,
under
Champlain

* Mod. Univ. Hist. vol. 39, p. 403, 412. Holmes's Annals, vol. 1, p. 148, 163.

SECTION VI.

A new association formed in England, to colonize America—The letters patent commonly called the first charter of Virginia—Proceedings of the Plymouth Company under this charter—The king's instructions relative to both the colonies or companies to be formed under this charter—Proceedings of the first or South Virginia Company—The first colony sent out to South Virginia under Newport, and a permanent settlement formed at James' town.

Although one hundred and eight years had now elapsed, since the discovery of the northern part of the continent of America, by Cabot, yet the English had as yet made no effectual settlement in any part of this new world. From the coast of Labrador to the Cape of Florida, not a single European family was to be found, except the small settlement of Spaniards at St. Augustine, and a few French at Port Royal, in Acadie. The period, however, of English colonization was at length arrived. Through the unremitting endeavours of the Rev. Mr. Richard Hackluyt, before mentioned,* or, as some will have it, through the zeal and exertions of captain Bartholomew Gosnold,† who had made the successful voyage of experiment in the year 1602, before spoken of, an association was formed in England in the year 1606, consisting both of men of rank and men of business, who had resolved to repeat the attempt to colonize some part of North America. The former grant made to Sir Walter Raleigh being now void by his conviction and attainder for high treason, for which he now lay imprisoned in the tower, it was supposed that a clearer way was thereby opened to any subsequent royal grant for the same purpose. This association of respectable merchants and gentlemen, therefore, now petitioned the king for the sanction of his authority, to warrant the execution of their plans. It was not a subject with which James was altogether unacquainted: he had before this, turned his attention to consider the advantages which might be derived from colonies, at a time when he patronized his scheme for planting them in some of the ruder provinces of his ancient kingdom of Scotland, with

SEC. VI.
1606.

A new association formed in England, to colonize America.

* Robertson's Hist. of America, vol. 4, p. 176, 177.

† Oldmixon's British Empire in America, vol. 1, p. 220. Burk's Hist. of Virginia, vol. 1, p. 75.

SEC. VI. a view of introducing there, industry and civilization.* He was
 1606. now no less fond of directing the active genius of his English subjects, towards occupations not repugnant to his own pacific maxims, and listened with a favourable ear to their application.

The letters patent commonly called the first charter of Virginia.

He accordingly, by letters patent bearing date the tenth day of April, in the fourth year of his reign, (A. D. 1606,) at the desire and request of the applicants, divided that portion of North America which stretches from the thirty-fourth to the forty-fifth degree of north latitude, into two districts nearly equal, and the members of the association "into two several colonies and companies; the one consisting of certain knights, gentlemen, merchants, and other adventurers of our city of *London*, and elsewhere, which are, and from time to time shall be joined unto them, which desire to begin their plantation and habitation in some fit and convenient place, between four-and-thirty and one-and-forty degrees of the said latitude, amongst the coasts of Virginia, and the coasts of America aforesaid: and the other consisting of sundry knights, gentlemen, merchants, and other adventurers of our cities of *Bristol* and *Exeter*, and of our town of *Plimouth*, and of other places which do join themselves unto that colony, which do desire to begin their plantation and habitation, in some fit and convenient place between eight-and-thirty degrees and five-and-forty degrees of the said latitude, all amongst the said coasts of Virginia and America, as that coast lyeth."†

* Robertson's Hist. of America, vol. 4, p. 178. Also see note (H) at the end of this volume.

† Robertson, in his History of Virginia, (see his Hist. of America, vol. 4, p. 178,) seems to make the above division of the continent of America, an act of the king himself, assigning the reason of that division to have been, that "a grant of the whole of such a vast region to any one body of men, however respectable, appeared to the king an act of impolitic and profuse liberality. In his history of New England (same vol. p. 255,) he seems to assign a different reason: "this arrangement (meaning the division above mentioned) seems to have been formed upon the idea of some speculative refiner, who aimed at diffusing the spirit of industry by fixing the seat of one branch of the trade that was now to be opened, on the east coast of the island, (Great Britain,) and the other on the west." But whoever will attentively read the letters patent, will see that this division was made at the *special instance* and *request* of the association. It is probable, indeed, that the vast extent of the country to be colonized might have suggested to the associators a reason for requesting it to be divided into two colonies. See Hubbard M. S. N. Eng. 29, cited in Holmes's Annals, vol. 1, p. 152, note 1. To which may be added also, the probability, that as many of the associators resided in Devonshire, at Exeter, and Plymouth, the convenience of a separate arrangement into two trading companies, might have been a further reason for the division. See Oldmixon's British Empire in America, vol. 1, p. 26.

And granted, "that Sir Thomas Gates, Sir George Somers, SEC. VI.
 Richard Hackluyt, and Edward Maria Wingfield, adventurers of 1606.
 and for our city of London, and all such others, as are, or shall
 be joined unto them of that colony, shall be called the first colo-
 ny; and they shall, and may begin their said first plantation and
 habitation, at any place upon the said coast of Virginia or Ameri-
 ca, where they shall think fit and convenient, between the said
 four-and-thirty and one-and-forty degrees of the said latitude;
 and that they shall have all the lands, &c. from the said first seat
 of their plantation and habitation by the space of fifty miles of
 English statute measure, all along the said coast of Virginia and
 America, towards the west and southwest, as the coast lyeth,
 with all the islands within one hundred miles directly over against
 the same sea-coast; and also all the lands, &c. from the said
 place of their first plantation, &c. for the space of fifty like Eng-
 lish miles, all amongst the said coasts, &c. towards the east and
 northeast, or towards the north, as the coast lyeth, together with
 all the islands, &c. and also all the lands, &c. from the same fifty
 miles every way on the sea-coast, directly into the main land, by
 the space of one hundred like English miles."

And likewise granted, "that Thomas Hanham and Raleigh
 Gilbert,* William Parker and George Popham, and all others of
 the town of *Plimouth*, in the county of *Devon*, or elsewhere, which
 are, or shall be joined unto them of that colony, shall be called
 the *second colony*; and that they shall and may begin their plan-
 tation, &c. at any place between eight-and-thirty and five-and-
 forty degrees of the same latitude, &c." (with the like limita-
 tions as before to the *first colony*.)

"Provided always, that the plantation and habitation of such
 of the said colonies, as shall last plant themselves, as aforesaid,
 shall not be made within one hundred like English miles of the
 other of them, that first began to make their plantation, as afore-
 said."

"And we do also ordain, establish, and agree, that each of
 the said colonies shall have a council, which shall govern and
 order all matters and causes which shall arise within the same
 several colonies, according to such laws, ordinances, and in-
 structions, as shall be, in that behalf, given and signed with our
 hand or sign manual, and pass under the privy seal of our realm

* Son of the famous navigator before mentioned, Sir Humphrey Gilbert. *Mod. Univ. Hist.* vol. 39, p. 270.

SEC. VI. of England: each of which councils shall consist of thirteen
1606. persons, to be ordained, made, and removed, from time to time, according as shall be directed and comprised in the same instructions.”

“And that also there shall be a council established here in England, which shall, in like manner, consist of thirteen persons, to be, for that purpose, appointed by us, our heirs, and successors, which shall be called our *council of Virginia*; which shall, from time to time, have the superior direction of all matters concerning the government of the said colonies.”*

He moreover granted license to the several councils of the said colonies, to cause search to be made for mines of gold, silver, and copper, yielding to him the fifth part of the gold and silver,† and the fifteenth of the copper, that should be got therefrom; and to cause money to be coined.

He likewise authorized each of the aforesaid companies, to take to the said plantations and colonies, as many of his subjects as would willingly accompany them. Provided that none of the said persons should be such, as should thereafter be specially restrained by him, his heirs, or successors.

He moreover granted license to the said colonies, for their several defences, to encounter, expulse, repel, and resist all such persons, as, without their special license, should attempt either to inhabit within their several precincts, or annoy them.

He authorized also, each of the said colonies, to take all persons, with their vessels and goods, who should be found trafficking in any harbour, creek, or place within their respective limits, not being of the same colony, until they should agree to pay into the hands of the treasurer of that colony, within whose precincts they should so traffick; if the king's subjects, two and a half per cent. upon the wares and merchandizes so trafficked;

* The reader cannot but observe here, a considerable similitude, if there was not an intended imitation, of the Spanish mode of governing their colonies, adopted shortly after their conquest of Mexico and Peru, early in the sixteenth century, about the year 1511. Their colonies in America were divided into two viceroy-ships, north and south, of which Mexico and Peru were the principal provinces. Over these, the *royal council of the Indies*, (permanently held in the mother country, in the place where the monarch resides, and in which council he is supposed to be always present,) has the supreme government of all the Spanish dominions in America. See Robertson's Hist. of America, (book 8,) vol. 4, p. 19.

† This was the proportion reserved by the king of Spain, from the Spanish mines of gold and silver in America. Harris's Voyages, vol. 2, p. 164. Robertson's Hist. of America, vol. 4, p. 366, note 34.

if strangers, five per cent: which sums of money, for one-and-twenty years next ensuing the date of the letters patent, should be appropriated to the use of the plantation, where such traffick should be made; at the end of which period, to be to the use of the king.*

SEC. VI.
1606.

Also, that the said colonies might import out of any of the king's dominions into their respective plantations, all goods whatever, without paying any duty thereon, for the space of seven years next ensuing the date of the said letters patent.

He also declared, that all persons who should dwell and inhabit within either of the said colonies, and their children born therein, should have and enjoy all liberties, franchises, and immunities, as if they had been abiding, or born within the realm of England.

And finally, that all lands in each of the said colonies should be held of the king, his heirs and successors, as of his manor of East-Greenwich, in the county of Kent, in free and common soccage only, and not in capite.†

The most remarkable clauses in these letters patent, are those which prescribe the mode of government for these colonies, to wit: that the councils in each colony should govern according to such laws, ordinances, and instructions, as should be given and signed by the king; and that he should have the power of appointment and removal of all such persons as should compose the two councils in the colonies, as well as those at home forming the *council of Virginia*. It must be acknowledged, that these clauses do not explicitly invest the king with the power of making the laws, ordinances, and instructions, since the latter of them particularly provides that the *council of Virginia* should have the superior management and direction of all matters that shall, or may concern the government of the said colonies; which seems to imply, that the *colony of Virginia* at home, should have the power of making such laws, ordinances, and instructions, to be approved of and signed by the king. This construction seems to be warranted by what is called the *second charter*

* Robertson (in his Hist. of America, book 9, vol. 1, p. 181,) has construed this clause as giving to these colonies, "the unlimited permission of trade with foreigners," and mentions it as one of the articles in it "unfavourable to the interest of the parent state, as it deprived the parent state of that exclusive commerce, which has been deemed the chief advantage resulting from the establishment of colonies." It demonstrates, however, that James was, at this time, sincere in his encouragement of these colonies.

† See the letters patent at large in Hazard's Collections, vol. 1, p. 50.

SEC. VI. of *Virginia*, (in 1609,) wherein it is expressly so provided.

1606.

But the power of appointment and removal, as before mentioned, certainly vested a great preponderating influence with the king; and he might, without doubt, propound to the council at home, what laws, ordinances, and instructions he pleased, or might reject any proposed by them. These clauses, indeed, are not to be reconciled to the present ideas of political liberty entertained in either America or England. The principles of an elective and representative government, were developed by the English revolutionists, in 1690, with such wisdom and moderation, and have been cherished by their descendants in America with so much ardour, that there are few readers among us at this day who would approve of a mode of government so repugnant to those principles. But it ought to be remembered, as the best historian of England has clearly demonstrated,* that the two first English princes of the house of Stuart, were not tyrants in their natural disposition. There is strong presumption that James I. sincerely believed, that his prerogative was, by the English constitution, paramount to the laws; or, at least, that where parliament had made no provision, his proclamations, in virtue of his sovereign authority were the substitutes of laws. And although his son Charles, instigated by the unprincipled Buckingham, manifested at the first of his reign, a strong inclination to render himself despotic, yet much allowance is to be made for him, on account of his education under his father, from whom he would naturally imbibe all that monarch's metaphysic notions of the *jure divino* power of kings.† It is certain that the arbitrary conduct of their immediate predecessors of the Tudor line, particularly queen Elizabeth and Henry VIII. seemed too strongly to authorise them in these sentiments. Although James's English subjects began in his reign to hold the privileges of parliament and the power of the house of commons in higher estimation than formerly, yet the temper of the age was not then such as to view with much scrutiny or jealousy such small aberrations from the fundamental principles of a representative government as were to be found in an abstract clause of a charter as yet unexecuted. It was therefore without hesitation or reluctance,

* Hume.

† Voltaire's character of Charles seems to be just: "He was a good husband, a good master, a good father, and an honest man; but he was an ill advised king." *Age of Louis XIV.* vol. 1, p. 19.

that the patentees of these colonies prepared, under the authority of this charter, to execute their respective plans. SEC. VI.

1606.

Although only four gentlemen are specially named in the foregoing letters, as patentees for the second colony, yet the general expression, "and all others of the town of Plymouth, in the county of Devon, or elsewhere, who shall be joined unto them of that colony,"—necessarily implied the association of other persons with them for the purpose of managing the affairs of the second colony, which association now assumed the indiscriminate appellations of the Plymouth company, and the North Virginia colony. Accordingly, we find mention made of the interference of so high and respectable a character as Sir John Popham, lord chief justice of England, as one of the members of the Plymouth company, and a great promoter of the design. Mr. George Popham, one of the patentees, was his brother.* Sir Ferdinando Gorges, then governor of Plymouth, and several other west-countrymen and merchants are mentioned also as being concerned in this company.† They seem to have been more expeditious than the members of the London company, in their first attempts to carry into effect the intentions of the charter. In August, 1606, they dispatched a ship of fifty tons, under the command of Henry Challons, to make further discovery of the coasts of North Virginia; and, if it should appear expedient, to leave as many men as he could spare, in the country. On his passage, however, from the West India islands, towards the American coast, he and his crew, consisting of about thirty persons, were taken by a Spanish fleet, and carried into Spain, where his vessel was confiscated. Although this misfortune considerably abated the ardour of the Plymouth company, yet the lord chief justice Popham having, immediately after the departure of Challons, sent out, at his own expense, another ship, under the command of Thomas Hanam, one of the patentees, whose business was not so much to settle a colony as to make discovery in order thereto, the account given of the country on the return of this

Proceedings of the Plymouth Company under this charter.

* Hutchinson's Hist. of Massachusetts, vol. 1, p. 10.

† Oldmixon's Brit. Emp. in America, vol. 1, p. 26.—It may be proper to observe here, that, although the two colonies were to be under the direction and government of the king and his council of Virginia, yet the associators who applied to the king for his letters patent became thereby divided also in two mercantile or trading companies, one at London, the other at Plymouth, the former as proprietors of the first or South Virginia colony, and the latter as proprietors of the second or North Virginia colony, but each colony subject to the "laws, ordinances, and instructions," of the king and his council of Virginia.

SEC. VI. ship was so favourable as to cherish in a considerable degree the spirit of enterprise necessary for further undertakings.*

1606.
The king's
instruc-
tions rela-
tive to both
colonies.

Meanwhile, in order to effectuate the purpose of the letters patent, a set of *instructions*, under the king's privy seal, relative to both colonies or companies, in pursuance of the before mentioned important clause in these letters, were made out on the twentieth of November, in the same year. Whether these instructions were drawn up by the king himself, history does not expressly say.† As James was not a little vain of his talents as a writer, and not much less so as a legislator, there is great probability that they were the dictates of his own mind. If the arbitrary power which he supposed to be annexed to the prerogative of his crown, be allowed him, there is nothing in them but what was consonant to his usual exercise of that prerogative, and apparently necessary to carry into effect the provisions of the charter.

Proceed-
ings of the
first or
South Vir-
ginia com-
pany.

The patentees or proprietors of the *first* or *South Virginia colony*, proceeded with more effect, though not with so much expedition, as those of the *second* colony. On the receipt of their letters patent, preparations for the purpose had been undertaken by them. Three small vessels, one of a hundred tons, another of forty, and a pinnace of twenty, with every thing requisite for settling a colony, consisting of one hundred and five persons, were provided by the latter end of the year, and the naval command thereof, together with the care of transporting the colony, was entrusted to capt. Christopher Newport, said to be "a mariner of celebrity and experience on the American coast."

Besides the set of "orders and instructions," under the king's privy seal before mentioned, two other several sets of instruc-

* Mod. Univ. Hist. vol. 39, p. 270, and Holmes's Annals, vol. 1, p. 154, where it is said, that Sir Ferdinando Gorges observed on this occasion, that Martin Pring (or Prinn) who went with Hanam in this voyage, (and had commanded the voyage of discovery in 1603, as before mentioned,) brought on his return from this last mentioned voyage, the most exact account of the Virginia coast, that ever came to his hand. What part of the American coast they visited does not appear in modern authors who mention this voyage. The particulars of it, however, are probably to be found in Purchas's Pilgrimages.

† Chalmers, in his Annals, (ch. 2, p. 15,) thus speaks of these instructions.—"While the council of the first colony was occupied during the summer of 1606, in procuring emigrants to accomplish the great object of its wishes, James was equally employed in a business the most arduous of any; in compiling a code of laws for an infant people. On the 20th of November, of that year, he issued "Orders and Instructions for the Colonies," under the privy seal of England.—He adds in a note thereto—"The Instructions are in Stith's Hist. of Virg. 25, 30. See them also, nearly at large, in Burk's Hist. of Virg. vol. 1, p. 85.

tions were given by the South Virginia Company, on this occasion. One to capt. Christopher Newport, concerning the naval command and transportation of the colony: the other, to him (Newport) in conjunction with capt. Bartholomew Gosnold and capt. John Ratcliff, respecting the form and administration of the government. These last, being the most important, were close sealed, and accompanied with orders that they were not to be opened for twenty-four hours after their arrival on the coast of Virginia. To these were added also by his majesty, by way of advice, instructions of a general nature; containing, however, one or two strange particulars, concerning a communication by some river or lake between Virginia and the Indian or South Sea.*

SEC. VI.
1606.

This little squadron sailed from Blackwall, on the Thames, on the 19th of December, 1606; but by some unlucky accidents, were for several weeks detained on the coast of England. At last, they continued their voyage, and having taken in fresh water and other necessaries at the Canaries, proceeded to the West India islands, where they arrived on the twenty-third of February, 1607, and staid amongst them, but chiefly in the island of Nevis, about five weeks. These delays seem to have afforded nourishment to some violent dissensions, which arose, during the voyage among the adventurers. Jealousy of power, and envy of preferment, seem to have been at the bottom of them. Symptoms of these dissensions made their appearance before the squadron had cleared the English coast, but they were in some measure allayed, it seems, by the prudent conduct and pious exhortations of their chaplain, the rev. Mr. Hunt. They, however, eventuated in the arrest of capt. John Smith, on the absurd charge of an intention to murder the council, usurp the government, and make himself king of Virginia; and he was accordingly kept in close confinement, from the time of their departure from the Canaries, during the remainder of the voyage. Smith was, perhaps, the most extraordinary personage, of whom the early histories of North America have made mention. The accounts of his adventures in the east of Europe, seem rather to have been borrowed from some romance of the thirteenth century than taken from any real scenes of life. After these adventures, he had returned to England, his native country, and had accidentally formed an acquaintance with captain Gosnold, in the height of

The first colony sent out to settle Virginia under Newport, and a permanent settlement formed at Jamestown.
1607.

* Burk's Hist. of Virginia, vol. 1, p. 93.

SEC. VI. the zeal of the latter for colonizing America. Gosnold rightly
 1607. conceiving that Smith's active genius was peculiarly fitted for such an undertaking, communicated his schemes to him. They were ardently embraced by him, and he embarked with the other colonists for America.

Thus disturbed by internal dissensions, the little fleet left the West Indies, on the third of April, 1607, but not falling in with the land for three days after their reckoning was out, serious propositions were made for returning to England. The place of their destination was the old disastrous situation at Roanoke; but fortunately they were overtaken by a storm, which drove them to the mouth of the Chesapeake, which they entered on the twenty-sixth of April. The promontory on the south side of the entrance into the bay, they called Cape Henry, in honour of the then prince of Wales, who died not long afterwards, and that on the north side Cape Charles, in honour of the then duke of York, who was afterwards king Charles I. of England. Impatient to land, a party of about thirty men went on shore at Cape Henry, to recreate and refresh themselves, but they were suddenly and boldly attacked by only five savages, who wounded two of them very dangerously. On the night after this incident occurred, it was deemed by the commanders Gosnold and Newport, that the limitation of time and circumstances, under which they had been restricted from examining their sealed orders, had now expired. The box, containing them, was therefore now opened, and, on reading the said orders, it appeared—"that *Bartholomew Gosnold, John Smith, Edward Wingfield, Christopher Newport, John Ratcliffe, John Martin, and George Kendall* were named to be the councell, and to choose a president amongst them for a yeare, who with the councell should governe. Matters of moment were to be examined by a jury, but determined by the major part of the councell, in which the president had two voyces."* Before any further proceedings under these orders, even the election of a president, they deemed it most proper first to discover and ascertain some fit "place to plant in," and accordingly, from the time of their arrival at Cape Henry, on the 26th of April, to the 13th of May, they were employed in searching for such suitable place. A large and beautiful river, which empties itself into the bay, on the west of Cape Henry, naturally first invited their attention. It was in that season of the year

*Smith's Hist. of Virg. (new edit. of 1819,) vol. 1, p. 151.

when the country is clothed in its richest verdure, and seemed to present itself to them dressed in its most attractive charms. They proceeded up this river, to which they gave the name of *James*, in honour of his majesty: though called by the natives *Powhatan*, "according to the name of a principall countrey that lyeth upon it."* Near the mouth of this river they met with five of the natives, who invited them to their town—Kecoughtan, where Hampton now stands. Here those, who went on shore, were feasted with cakes made of Indian corn, and "regaled with tobacco and a dance."† In return they presented to the natives beads and other trinkets. As they proceeded up the river, they met with another company of Indians armed with their bows and arrows. Their chief—Apamatica, holding in one hand his bow and arrows, and in the other a pipe of tobacco, demanded the cause of their coming. They made signs of peace, and were received in a friendly manner.‡ On further exploring the river they came to a peninsula, situated on the north side of it, where they were also hospitably received by the natives, whose chief—Paspaha, being informed of their intentions, offered them as much land as they wanted, and sent them a deer for their entertainment. As this peninsula was so situated, as not only to afford them convenient anchorage; but some security also against any invasion of the natives, it was fixed upon as the most eligible spot for their first colonization. Accordingly they here debark-

SEC. VI.

1607.

* Smith's Hist. of Virg. (new edit. of 1819,) vol. 1, p. 115.

† The above is taken from *Burk's* Hist. of Virg. vol. 1, p. 96, who cites "Smith," in support of this passage; but no remark of that kind, relative to Kecoughtan, appears in *Smith's* Hist. of Virg. as newly republished in the year 1819.

‡ In support of this occurrence *Burk (ibid.)* cites "*Stith's* Virg." It may be remarked, that neither this nor the foregoing incident is at all noticed in *Smith's* Hist. of Virg. the most authentic work of any of the early histories of Virginia. It is probable, that *Stith*, in his Hist. of Virg. (here cited by *Burk*.) has collected them from some other source. It may be here further remarked also, that the first chapter of the third book of *Smith's* General History of Virginia, is stated to have been drawn up or "extracted" from some account thereof written "by *William Simons*, Doctor of Divinitie:"—whose name does not appear in the list of the first adventurers in this voyage. The name of *Richard Simons* appears in that list as one of the "gentlemen planters." He might have been a near relative to *Doct. William Simons*, and from him the doctor might have had the substance of the narrative which he drew up, from which *Smith* appears to have borrowed his narration of their first arrival and settlement. It will be recollected, that *Smith* was at this time, during their arrival within the capes of Chesapeake, and until their landing at James town, under an arrest, if not under close confinement. He could not, therefore, have been personally privy, (although on board of capt. *Newport's* ship,) to all the minute incidents attending their first arrival within the capes, and probably kept no journal of the voyage.

SEC. VI. ed on the 13th of May, and called the place James-town, which
1607. name it has ever since retained. Agreeably to their instructions they now proceeded to organize their government by swearing the several members of the council, and choosing their president. They excluded Smith from the council, and a declaration was entered on their minutes, setting down at large their reasons for so doing. He was released from his confinement, but it was with some difficulty that he could obtain a trial in the colony, his accusers proposing that he should be sent to England for that purpose. After a fair hearing, however, he was honourably acquitted of the charges against him, and took his seat in the council.

As a minute detail of the proceedings of these colonists, and the events which attended them, more properly appertains to a history of Virginia, of which there are several, we shall for the future confine ourselves only to those incidents thereof which have some immediate relation to that of Maryland.

SECTION VII.

The distresses of the first Virginia colony, and the services of captain Smith—His first attempt to explore the bay of Chesapeake—His second attempt more successful—A general sketch of the tribes of Indians then inhabiting Virginia and Maryland—Smith becomes president of Virginia, and the tenor of some instructions from England to Virginia—An attempt of the Plymouth company to settle a colony in Maine—The second charter of Virginia, and the causes of granting it—The settlement of the Dutch at New York—English attempt to settle Newfoundland—the third charter of Virginia—Captain Argall's expedition to break the up French and Dutch settlements at Nova Scotia and New York.

During the remaining part of the year 1607, after the arrival and settlement of this first Virginia colony at James-town, it appears to have struggled with much difficulty for existence. The provisions which were left for their sustenance by Newport, who sailed with his ships for England, some time in June this year, were not only scanty, but bad in their quality, having received damage in the holds of their ships during the voyage. Hence the colonists became subject to diseases, arising as well from the unhealthiness of the climate, as from a scarcity bordering on famine. This contributed much to a diminution of their numbers. They were harassed also with repeated attacks by the natives, who were far from being content with the visit of these strangers, when they found out that it would probably be permanent. Added to those difficulties, the conduct of their president Wingfield, and his successor Ratcliffe, was to excite considerable disturbance and dissatisfaction. Disregarding the distresses of the colony, those presidents had not only consumed the stores of provisions, in the indulgence of their own luxury, but had planned schemes for deserting the country and escaping to England. Smith, whose active and vigorous mind had been constantly employed during these distresses, both in protecting the colony from the hostile attacks of the savages, and in procuring from the natives corn and other provisions, was obviously the only member of the council in whom the colonists could, with any confidence, repose the administration of their affairs. Pursuing with ardour, his endeavours to procure supplies, as well as to explore the country, he was unfortunately captured by the Indians; but after undergoing an interesting series of adventures,

SEC. VII.

1607.

The distresses of the first Virginia colony, and the services of captain Smith.

SEC. VII with them for seven weeks, his life was almost miraculously saved, through the amiable interposition of the princess Pocahontas, a favourite daughter of the emperor Powhatan. Restored to the colony again, his influence became doubly necessary. Wearied with their hardships and distresses, a great portion of the colony had determined to abandon the country. He arrived just in time to prevent the execution of their design. By persuasion he obtained a majority for continuing; and by force he compelled the minority to submit. He now experienced also, some benefit from his captivity; for it acquired him considerable repute among the Indians, and enabled him to preserve the colony in plenty of provisions until the arrival of two vessels, which had been dispatched from England under the command of captain Newport, with a supply of provisions, of instruments of husbandry, and with a reinforcement of one hundred and twenty persons.

1608. The seasonable accession of force and provisions, although it brought joy to the colonists, yet had the inconvenience of inducing them again to a relaxation of discipline, and to a neglect of the advice and direction of Smith, who zealously opposed their idle pursuit of wealth, in loading the ships destined to return in the spring, with an imaginary golden ore, instead of preparing for their future subsistence. Perceiving this, he bent his attention to more important pursuits. Well knowing that this fatal delusion would end in a scarcity of food, which had indeed already begun to be felt, he proposed as they had not hitherto extended their researches beyond the countries contiguous to James' river, to open an intercourse with the more remote tribes, and to explore the shores of that vast reservoir of waters—the bay of Chesapeake. The execution of this arduous design, he undertook himself, accompanied by doctor Russell, in an open boat of about three tons burthen, and with a crew of thirteen men. As this excursion appears to have been the very first exploration of the Chesapeake, that had been as yet ever attempted by any European, it becomes as interesting a part of the history of Maryland as that of Virginia. No other authentic account of this little voyage having ever been given but by *Smith* himself, in his General History of Virginia, that account thereof has been the only source of information, to which all the historians of Virginia could with propriety resort in framing a narration of that part of their history, which has any relation to

His first attempt to explore the bay of Chesapeake.

it. But in their abridgments and summary accounts of it, they SEC. VII.
1608. have omitted so many material incidents, mentioned in the original narration, that those accounts are, for the most part, obscure and unintelligible. It is, therefore, here supposed, that a full and complete extract from the above mentioned General History of Virginia, in the original style of its language, of all such parts of this voyage, as have immediate relation to those parts of Maryland now first discovered, will be more satisfactory to the reader than garbled and imperfect quotations from the same.

“CHAPTER V.” (*of Smith’s General History of Virginia.*)

The accidents that hapned in the discovery of the bay of Chisa-peack.”

“The second of June, 1608, *Smith* left the fort* to performe his discovery with this company:

“Walter Russell, <i>doctor of physicke</i> ,	}	<i>Gentlemen.”</i>
Ralfe Morton,		
Thomas Momford,		
William Cantrill,		
Richard Fetherstone,		
James Burne,		
Michell Sicklemore,		

“Jonas Profit,	}	<i>Souldiers.”</i>
Anas Todkill,		
Robert Small,		
James Watkins,		
John Powell,		
James Read,		
Richard Keale,		

“These being in an open barge neare three tons burthen, leaving the Phoenix† at Cape *Henry*, they crossed the bay to

* Meaning the palisadoed ‘fort’ at James-town.

† This was one of the ships that had brought the “first supply,” as it was called, in the year 1607, the year after the original settlement of the first colonists at James-town. The Virginia Company in England had, in the year 1607, dispatched, according to *Smith*, “two good ships with neare a hundred men, well furnished with all things could be imagined necessary, both for them and us; the one commanded by captaine *Newport*,—the other by captaine *Francis Nelson*, an honest man, and an expert mariner. But such was the lewardnesse of his ship, (the Phoenix,) that “though he was within the sight of Cape *Henry*, by stormy contrary winds was he forced so farre to sea, that the West *Indies* was the next land, for the repaire of his masts, and reliefe of wood and water. But *Newport* got in and arrived at James-towne, not long after the redemption of

SEC. VII. the eastern shore, and fell with the isles called *Smith's isles*,
 1603. after our captaine's name.* The first people we saw were two grim and stout salvages upon Cape *Charles*; with long poles like jauelings, headed with bone, they boldly demanded what we were, and what we would; but after many circumstances they seemed very kinde, and directed us to *Accomack*,† the habitation of their *Werowance*,‡ where we were kindly intreated. This king was the comeliest, proper, civill salvage we incountered. His country is a pleasant fertile clay soyle, some small creekes; good harbours for small barks, but not for ships. They

captaine *Smith*." The exact date of *Smith's* return from his captivity on the *Chickahominy* does not appear, even from his own history; but, from a circumstance stated as having occurred on the same day of his return, or within a day or two after it, when "the boughs of the trees were loaded with isickles," we must suppose it to have been in either January or February of 1607-8. *Neuport* might, therefore, have arrived in March, and captain *Nelson* in the *Phoenix* in April following. "The fraught of this ship (the *Phoenix*,) being concluded to be cedar, by the diligence of the master and captaine *Smith*, she was quickly reladed." This agrees with her departure on the second of June, 1608. See *Smith's Hist. Virg.* vol. 1, ch. 2, 3, 4, 5, of the "Third Booke."

* The island, still called *Smith's* island, situated about two miles to the south east of Cape *Charles*, and which is about twelve miles long and about two miles broad, must have been the principal island here alluded to.

† It is evident from *Smith's* map, inserted in his book, that this place, above alluded to, denominated by him in his said map, *Accowmack*, was situated within the interior part of Cape *Charles*, and on or near to the place called *Cherryton*, in *Northampton* county. These *Accomack* Indians are stated by *Smith*, (in another part of his History, vol. 1, p. 120, ed. of 1819,) to have been able to turn out "80 men," or warriors, and spoke the language of *Powhatan*, who ruled over them as king, as he did also over some other tribes or nations of Indians, whose residence was on the Eastern Shore of Virginia, and who will be hereafter mentioned. But this rule or dominion over them by *Powhatan*, though expressly so stated by *Smith*, must obviously have been more in the nature of an *alliance* than an absolute dominion. The breadth of the Chesapeake, at this part of it, dividing *Powhatan* from these dominions, if they were his, must have rendered his power over them very feeble, and at most but ephemeral, especially when we reflect upon the difficulty of navigating such a water with Indian canoes. This receives some confirmation by the following remark in *Smith's Hist. of Virg.* (vol. 2, p. 64,)—"There may be on this shore, (meaning the Eastern Shore of Virginia,) about two thousand people. They on the west would invade them, but that they want boats to crosse the bay." It is possible, however, that *Powhatan* might, at some time before, have made a conquest of them. He did not gain them by inheritance, if it be true, as is said, that the countries inherited by him from his ancestors, lay only about James-river and Pamaunkee, as stated by *Smith* in his Hist. vol. 1, p. 142.

‡ *Smith* has thus explained this term—"This word, *Werowance*, which we call and construe for a king, is a common word, whereby they call all commanders; for they have but few words in their language, and but few occasions to use any officers more than one commander, which commonly they call *Wero-wance* or *Caucoronse*, which is captaine."—*Smith's Hist.* vol. 1, p. 143.

spake the language of *Powhatan*, wherein they made such descriptions of the bay, isles, and rivers, that often did us exceeding pleasure. Passing along the coast, searching every inlet and bay, fit for harbours and habitations. Seeing many isles in the midst of the bay we bore up for them, but ere we could obtaine them, such an extreame gust of wind, rayne, thunder, and lightening happened, that with great danger we escaped the unmerciful raging of that ocean-like water. The highest land on the mayne, yet it was but low, we called *Keale's* hill,* and these uninhabited isles, *Russell's* isles.† The next day, searching them for fresh water, we could find none; the defect whereof forced us to follow the next eastern channel, which brought us to the river of *Wighcocomico*.‡ The people at first with great fury

SEC. VII.

1608.

* From *Smith's* location of this "hill" on his map, it must have been some high land or rising ground on the bay-coast of *Northampton* county; perhaps some where about *Onancock*. He appears throughout his exploration of the Chesapeake to have appropriated names to several places in compliment to individuals of his crew; probably from some incidental circumstances attending their discoveries, not mentioned in the narration of his voyage. *Richard Keale*, one of his "souldiers," might possibly have first observed or discovered this "hill," and *Smith* called it after him.

† These isles, which *Smith* called *Russell's* isles, (probably in compliment to his friend and present companion, *Doct. Russell*,) were the lowest cluster within the bay. It is a very extraordinary circumstance, however, that in the latest and best maps of Maryland and Virginia a disagreement occurs in the denomination given to these lowest islands. In *Griffith's* map of Maryland, published in 1794, they are called *Tangier* islands; but in that of Virginia, published by *Bishop Madison* in 1807, these same islands are denominated *Watt's* islands. The latter denomination we may suppose to be the most correct.

‡ The uncertainty of the location of this river, here called by *Smith* *Wighcocomico*, but, in his map, the *Wighco*, (a name, which he most probably had from the natives,) was subsequently in a great part the occasion of much contest and litigation, not only in the first place between Virginia and Maryland, soon after the first colonization of the latter, but also between the proprietaries of Maryland and Pennsylvania—*Lord Baltimore* and *William Penn*, when the latter came into possession of the three lower counties on the Delaware, now the Delaware state. Supposing the allegation to be well founded, as it appears to be, which was made in the bill in chancery filed by the Penns, and drawn by the celebrated *Lord Mansfield*, when acting as counsel for them, in the year 1735, against *Lord Baltimore*, for a specific performance of the agreement before that time made between the said Penns and *Lord Baltimore*, relative to the bounds of their two provinces, and in which it was alleged, that "the tracts of land granted to *Lord Baltimore*, and described in his charter, were so described and bounded by the half of *Captain Smith's* History and map of what was then called Virginia, and no other, and so all skilfull persons do own, acknowledge and believe, which manifestly appears, for that the said map has all and every of the names of the several places which are contained and mentioned in the said letters patent, and no other map or maps whatsoever, which was extant in the year 1632, and at the time of granting the said letters patent, (save only the said

SEC. VII. seemed to assault us, yet at last with songs and dances and much mirth, became very tractable, but searching their habitations for water, we could fill but three barricoes,* and that such puddle, that never till then we ever knew the want of good water. We digged and searched in many places, but before two daies were expired, we would have refused two barricoes of gold

1608.

Smith's map of Virginia,) hath or have the names and descriptions of the several places mentioned in the said letters patent,"—it followed that the division line between the two provinces, Maryland and Virginia, described in Lord Baltimore's charter for Maryland, to be "a right line drawn from the promontory or head land, called *Watkin's* point, situate upon the bay of Chesapeake, near the river *Wighco*, on the west, unto the main ocean on the east,"—must have in a great measure depended on a precise ascertainment of the river *Wighco*, as well as *Watkin's* point. But, although Smith's map is wonderfully correct, considering the time and circumstances under which it was made, yet it is certain, that, by comparing it with the latest and best maps of the Chesapeake, particularly Griffith's map of Maryland, we may perceive many material errors, especially in those parts of it contiguous and adjacent to *Watkin's* point. It is evident from Smith's map, and more particularly from his location therein of *Watkin's* point, that what he has laid down in his map as the river *Wighco*, was what is now called the *Pocomoke*, and that the true river *Wighco* was, even at the time of this his first exploration of the Chesapeake, the same as that now called the *Wicomoco*. This mistake of his may be reconciled, by reflecting on the unfavourable circumstances which attended this part of his voyage,—the want of water, the violent gusts of wind, which he describes, and the misinformation, or his misunderstanding of what information he derived from the Indians. Tradition also seems to confirm the supposition, that the river laid down in Smith's map as the *Wighco* was what is now called the *Pocomoke*. In the map, annexed to the articles of agreement entered into between Charles, Lord Baltimore, and the Penns, on the 10th of May, 1732, (referred to in the before-mentioned bill in chancery, a copy of which is now before me,) the name *Wighco* is affixed to the *Pocomoke*. Lord Baltimore, in this agreement, must have grounded himself on the evidence of maps or charts long before made, and particularly on certain maps mentioned in certain instructions sent by his great grand-father, Lord *Cecilius*, to his governor of Maryland, in the year 1651, when the dispute between Virginia and Maryland relative to their respective bounds on the Eastern Shore appears to have first commenced, but which maps do not appear to be now in existence, at least among the records of Maryland. *Watkin's* point, then, seems to have been a spot on *Smith's* map correctly handed down to posterity as being the same "promontory or head-land," (to wit, the south-western extremity on the Chesapeake of what is now called Somerset county) as was intended and meant both by *Smith*, in his map made in the year 1629, and by Lord *Cecilius*, (or Lord George his father,) in the draught of his charter for Maryland, in the year 1632. This given *point* being assumed as a *datum*, it evidently results from an inspection of *Smith's* map, that what he designated as the *Wighco*, (on which he has denoted an *Indian Wighcocomoco*,) was really and truly the *Pocomoke*, and that the real *Wighco* river, of which he, without doubt, received information on this excursion, lay further north, and emptied itself into the bay above *Watkin's* Point.

*The word "barricoes" here used, I take to be a corruption of the French word *burriques*, which signifies a hogthead or barrel.

for one of that puddle water of *Wighcocomoco*. Being past these isles, which are many in number, but all naught for habitation, falling with a high land upon the mayne, found a great pond of fresh water, but so exceedingly hot, wee supposed it some bath; that place we called poynt *Ployer*, in honour of that most honourable house of *Monsay* in *Britaine*, that in an extreame extremitie once relieved our captaine.* From *Wighcocomico* to this place, all the coast is low broken isles of morass, growne a myle or two in breadth, and ten or twelve in length, good to cut for hay in summer, and to catch fish and foule in winter; but the land beyond them is all covered with wood, as is the rest of the country."

"Being thus refreshed in crossing over from the maine to other isles, we discovered the wind and waters so much increased with thunder, lightning and raine, that our mast and sayle blew overboard, and such mighty waves overracked us in that small barge, that with great labour we kept her from sinking, by freeing out the water. Two dayes we were inforced to inhabite these uninhabited isles, which for the extremitie of gusts, thunder, raine, stormes, and ill wether we called *Limbo*.† Repairing our saile

* This alludes to an incident in the extraordinary adventures of *Smith*, which occurred to him in France. He had, by a most knavish imposition, been robbed in France of all his money and clothes. Wandering thus in great distress in Brittany, he was there most fortunately relieved by an "earle of *Ployer*," a French nobleman, who, during the then late civil wars in France, had, together with his two younger brothers, been sent to England and had there received their education. This circumstance most probably inspiring them with a particular partiality for an Englishman, they with great generosity and kindness entertained and befriended *Smith* in his "extreame extremitie," as he calls it.

But considerable difficulty arises in ascertaining with certainty, at this day, where this point *Ployer* was; as *Smith* has omitted to lay it down by that name in his map, I cannot but think it to have been the same point of land, which, when he subsequently formed his map, he denominated *Watkyn's po'nt*, most probably after *James Watkins*, one of his "souldiers" in the list of his crew, as first herein stated, and who was the first discoverer, as he afterwards states. It could not have been *Reade's* point, which he has laid down as forming the headland on the northern side of the mouth of the river *Pocomoke*, called by him the *Wighco*; for, the beginning of his next sentence,—“from *Wighcomoco* to this place,” &c., that is, from the river *Wighco* to point *Ployer*, excludes *Reade's* point, the preposition *from* being exclusive; and he has designated no other place of note between *Reade's* and *Watkins's* points, but has characterised the face of the country along the south shore of Somerset county bordering on *Pocomoke* bay, as it now appears,—“isles of morass,” or marsh, of many miles in length, from the mouth of the *Pocomoke* to *Watkins's* point.

† The word *Limbus*, (or, in the ablative case, in *Limbo*,) was originally a term in the Romish theology, used for that place where the patriarchs are supposed to have waited for the redemption of mankind, and where they imagine

SEC. VII.
1608.

SEC. VII. with our shirts, we set sayle for the maine and fell with a pretty
 1608. convenient river on the East called *Cuskarawaock*,* the people ran

our Saviour continued from the time of his death to that of his resurrection. *Du Cange* says, the fathers called this place *limbus*, *eo quod sit limbus inferorum*, as being the margin or frontier of the infernal regions or other world; and, in this sense, it seems to have been used in Shakspeare's "All's well that ends well;" (act v.)—"Indeed, he was mad for her, and talk'd of Satan, and of *limbo*, and of furies, and I know not what." But it was also used to signify any place of misery and restraint, and in this sense it is more than once used by *Butler* in his *Hudibras*.

"This 'tis t'engage with dogs and bears,
 Pell-mell together by the ears,
 And after painful bangs and knocks,
 To lie in *limbo*, in the stocks;
 And, from the pinnacle of glory,
 Fall headlong into purgatory."

The confinement for "two dayes," which *Smith* and his companions experienced in these islands, on account of the gusts and wind, induced him to give them the name of *Limbo*.

*In a "History of Maryland" stated to be "By a gentleman of Baltimore," the commencement, or a small part of which was published in the year 1818, in a periodical work, entitled "Journal of the Times," it is stated, that the *Ruskarawaock* "tribe" of Indians, "dwelt upon a river of the same name, and which is probably now called *Chester*, on the Eastern Shore."—Although the word *Ruskarawaock*, as here written, varies in a letter from the mode in which it is spelt in *Smith's History*, viz: *Kuskarawaock* and *Cuskarawaock*, in one place with a K, and in another with a C, yet we may suppose, that as the writer professes to follow *Smith's History* only, in his account of the Virginia and Maryland Indians, this variance from him in the mode of spelling the name might have been either an accidental or typographical error. But, it is somewhat surprising, that the author of this anonymous history professing to follow *Smith* solely, and consequently having *Smith's* map of the country before him, should suppose that the *Cuskarawaock* river was the same as that now called the *Chester*. On this map *Smith* has laid down the *Cuskarawaock* river as emptying into the Chesapeake opposite to the isles or isle which he called *Limbo*, where he had been detained by a gust or storm, prior to his crossing the bay to *Riccard's* cliffs, evidently the highlands on the Western Shore just above the Patuxent. The *Cuskarawaock* could never then be what is now called the *Chester* river, which empties into the Chesapeake nearly opposite to the Patapsco, which, as we shall presently see is the *Bolus* river of *Smith*. From this, and various other circumstances, which will hereinafter appear, there can be no doubt, that the *Cuskarawaock* of *Smith* was the present *Nanticoke* river on the Eastern Shore. Without this supposition it would be impossible to reconcile *Smith's* designation of the town or residence of the *Nantiquaks*, a tribe of Indians, whom he has located on the right bank or north side of that river, at a place, answering as nearly as may be to the still well known scite of the large and numerous tribe subsequently known by the name of the *Nanticokes*, the last remnant of whom did not migrate therefrom until about the year 1768. It is observable also, that *Smith* has designated in his map the town of the *Kuskarawaocks* near the head of the river so called by him. The scite or location of this town on *Smith's* map very nearly conforms to the location of the lands on Broad Creek emptying into the Nanticoke, near the head thereof, laid out under an act of Assembly of this Province, passed in the year 1711, en-

as amazed in troups from place to place, and divers got into the tops of trees, they were not sparing of their arrowes, nor the greatest passion they could expresse of their anger. Long they shot, we still ryding at an anchor without their reatch making all the signes of friendship we could. The next day they came unarmed, with every one a basket, dancing in a ring to draw us on shore, but seeing there was nothing in them but villany, we discharged a volly of muskets charged with pistoll shott, whereat they all lay tumbling on the ground, creeping some one way, some another into a great cluster of reedes hard by, where thare companies lay in ambuscade. Towards the evening we wayed, and approaching the shoare, discharging five or six shot among the reedes, we landed where there lay a many of baskets and much bloud, but saw not a salvage. A smoake appearing on the other side the river, we rowed thither, there we left some peeces of copper, beads, bells, and looking-glasses, and then went into the bay, but when it was darke we came back againe. Early in the morning foure salvages came to us in their canoes, whom we used with such courtesie, not knowing what we were, nor had done, having beene in the bay a fishing, bade us stay and ere long they would returne, which they did and some twentie more with them; with whom, after a little conference, two or three thousand men, women and children, came clustering about us, every one presenting us with something, which a little bead would so well requite, that we became such friends they would contend who should fetch us water, stay with us for hostage, conduct our men any whither, and give us the best content.

SEC. VII.
1608.

titled, "An act to impower commissioners to appoint and cause to be laid out three thousand acres of land on *Broad-creek*, in *Somerset* county, for the use of the *Nanticoke* Indians." *Broad-creek* was then supposed to have been in Maryland; but after the ascertainment of the division line between the Penns and Lord Baltimore, it fell into what is now the Delaware state. By this act of Assembly it appears, that certain Indians, called in the said act "the *Nanticokes*," were then, prior to the said act, settled on *Broad-creek* in *Nanticoke* river. But, as it appears from the act of 1723, ch. 18, entitled, "An act for quieting the possessions of the Indians inhabiting on *Nanticoke* and *Choptank* rivers," that the *Nanticoke* Indians still (in 1723) occupied, and had not altogether removed from their ancient scite on the *Nanticoke*, as located by Smith, which was by this act of Assembly confirmed to them, it may be fairly inferred, that the Indian town called *Kuskarawaock*, was situated on *Broad-creek*, that the lands on *Broad-creek* appropriated to the Indians there by the act of 1711, were at or near this ancient seat of the *Kuskarawaocks*, and that the Indians there settled on *Broad-creek*, though called the *Nanticokes* in the act, were yet really and truly a remnant of the *Kuskarawaocks* of *Smith's* History.

SEC. VII. Here doth inhabite the people of *Sarapinagh*, *Nause*, *Aroeck*,*
 1608. and *Nantaquak*, the best marchants of all other salvages. They
 much extolled a great nation called *Massanomekes*,† in search of

*Smith has not designated on his map the habitations or towns of either the *Sarapinagh* or *Aroeck*. That of the *Nause* he has located on the north side of the *Cuskarawaock* river near the mouth thereof. The *Nantiquaks* and *Cuskarawaocks* as before stated.

†The scite, or place of residence, which Smith has given in his map to these *Nantaquaks* on the *Cuskarawaock* river, corresponding as near as may be with the still well known ancient scite of the *Nanticoke* Indians, in Dorchester County, Maryland, and on the right bank or north side of what is now called the *Nanticoke* river, seems to establish the fact beyond a doubt, that these *Nantaquaks* and the late well known *Nanticokes* were one and the same tribe or nation of Indians. Mr. Charles Thompson in his annotations annexed to Mr. Jefferson's notes on Virginia, has said, that "a nation, now known by the name of *Nanticocks*, *Conoys*, and *Tuteloës*, and who lived between *Chesapeake* and *Delaware bays*, and bordering on the tribe of *Chihohocki*, entered into an alliance with the Five Nations, called by themselves *Mingoes*, by the French writers *Iroquois*, and by the Indians to the southward, with whom they were at war, *Massawomacs*." In another passage he states that "the *Nanticocks* and *Conoys* were formerly of a nation that lived at the head of *Chesapeake* bay, and who, of late years, have been adopted into the Mingo or Iroquois confederacy." It is to be regretted, that Mr. Thompson, as is too often the usage of American historians, has omitted to cite his authority for these statements. That the *Nanticocks* mentioned by him, and the *Nanticokes* on the *Nanticoke* river, on the Eastern Shore of Maryland, were one and the same tribe or nation, seems to be established by the fact stated, of their "being adopted into the Mingo or Iroquois confederacy," a circumstance recognized by the Provincial records of Maryland, as to the *Nanticokes* last mentioned. But, that these last mentioned *Nanticokes* formerly lived at the head of *Chesapeake* bay and between that bay and the *Delaware*, bordering on the tribe of *Chihohocki*, seems doubtful. Europeans, at the time of their first settlement in this country, not understanding the languages of the Indians with whom they conversed, which could be usually done only by signs, were too frequently liable to mistakes and misapprehensions of what the Indians informed them. The opinion, that the *Nanticokes* ever lived at the head of the *Chesapeake* bay, has most probably resulted from some such mistake. When *Smith* visited them in this "first voyage" of his up the *Chesapeake*, in the year 1608, they are represented as a tribe or nation permanently fixed on the *Cuskarawaock*, supposed by us to be the *Nanticocks*, and as being among "the best merchants of all other salvages." This mercantile disposition seems to indicate that they were not then new-comers, just settled on the *Nanticoke*. It is true, they are said by him, to have "much extolled a great nation called *Massawomaks*," but this does not necessarily imply that they were then in alliance with them. They might more probably have extolled them from fear than friendship, as Indians are said to have worshipped the devil. It appears that these *Massawomaks* had spread terror among even the *Powhatans* of Virginia. The *Kecoughtans*, at Hampton in Virginia, expressed to *Smith* their apprehensions of danger from them. The *Chihohocki's* are laid down by *Smith* on his map as seated on what he supposed to be the Atlantic Ocean, but evidently on the *Delaware* river, and on that part of it which subtends or is opposite to the *Elk* river on the *Chesapeake* side of the peninsula, most probably some where on the *Delaware*, between the *Assoquinimy* and *Christina* creeks. The *Nanticokes*, therefore, could not well be said to have lived at the head of

whom we returned by *Limbo*; "this river but only at the entrance is very narrow, and the people of small stature as them of *Wighcomoco*, the land but low, yet it may prove very commodi-

SEC. VII.
1608.

the bay, "bordering on the Chihohocki," for any short time previous to Smith's exploration of the Chesapeake in the year 1608.

As to the Massawomecks being the same nation of Indians as those called by the English the Five Nations, and by the French the Iroquois, although this supposition be highly probable, yet there does not appear to be any positive undeniable evidence of it. Mr. Jefferson, in the text, to which Mr. Thompson has annexed his note, seems to state the fact with some hesitation. "Westward," he says, "of all these tribes," (meaning those of the Powhatans, the Monacans, and Manahoacs,) "beyond the mountains, and extending to the great lakes, were the *Massawomecks*, a most powerful confederacy, who harrassed unremittingly the Powhatans and Monahoacs. These were *probably the ancestors* of the tribes known at present by the name of the Six Nations." It may be here remarked, that Smith, in his map of the Chesapeake or Virginia, has located the *Massawomecks* on what he supposed to be the ocean or a great lake, situated in a direct west course from the head of the Chesapeake, and in the direction from the head of that bay towards Allegany county, or the most western parts of Maryland; which probably induced Mr. Jefferson to fix the scite of the Massawomecks westward of the then habitable parts of Virginia and beyond the Allegany mountains. But in speaking of the Massawomecks, as they existed at the time of Smith's exploration of the Chesapeake, there is certainly some inaccuracy in supposing them to have been then "the ancestors of the Six Nations." They must have been the Five Nations themselves, (if their identity with the Massawomecks be assumed) then in the year 1608, well known by the French under the denomination of the Iroquois, as inhabiting the country round about those small northern lakes in the present State of New York, which are in the neighbourhood of the greater lakes of Ontario and Erie. The Monacans, afterwards called Tuscaroras, subsequently joining these Five Nations, made a sixth. If such was their home and place of residence in the year 1608, Smith was mistaken in his location of them, and Mr. Jefferson consequently so in following him. They did afterwards, when the Dutch of New York had furnished them with fire-arms, extend their conquests on the *western* side of the Allegany mountains, as Colden (their historian) says, as far south as Carolina. Heckewelder's idea, or traditional story from the Indians, that all the Indians, on the Atlantic coast of the northern and middle States of the Union, originally sprung from the two nations—the Lenni Lenape, commonly called Delawares, and the Iroquois or Five Nations, both of whom migrated into the country on this side of the Allegany mountains from parts beyond the Mississippi, seems to be founded on some misunderstood tradition or idle Indian story. It savours something of the priesthood in endeavouring to bolster up the improbable supposition, that all mankind sprung from one common parentage, and that the Indians of America originally crossed Cook's narrow straits between Asia and this continent. It is, moreover, entirely repugnant to the accounts of these Iroquois, as handed down to us by *Champlain* and others, who first founded Quebec and settled in their neighbourhood, in the year 1608, and about the same time of that year, in which *Smith* was exploring the Chesapeake, where he met with the Massawomecks. Supposing the Iroquois and the Massawomecks to be the same people, the first scite or place of their residence according to historians, (see *Colden's Hist. of the Five Nations*, p. 23) was at the place now called Montreal in Canada; but this was many years prior to the arrival of Champlain at Quebec, or of Smith's ex-

SEC. VII. ous, because it is but a ridge of land betwixt the bay and the
 1603. maine ocean. Finding this eastern shore, shallow broken isles,
 and for most part without fresh water, we passed by the straites
 of *Limbo* for the western shore; so broad is the bay here, we
 could scarce perceive the great high cliffs on the other side: by
 them we anchored that night and called them *Riccards Cliftes*.
 30 leagues we sayled more northwarde not finding any inhabit-

ploration of the Chesapeake, in the year 1608. Quarrelling with the Hurons and the Algonquins, (the latter of whom were called by the English Adirondacs,) who lived on the north of the St. Lawrence both in Upper and Lower Canada, and to whom the Iroquois were tributary, these Iroquois were driven by these other nations just mentioned, to the banks of the small lakes in the northern parts of the State of New York, where they were when Champlain arrived with his colony at Quebec, in 1608, and where also they must have lived, when Smith in this his voyage up the Chesapeake, met with a party of them at the head of that bay, carrying on a war with the Susquehanocks and the Tockwoghs. *Smith* states, that these Massawomecks, in their retreat from their encounter with him at the head of the bay, went up the river, which he called *Willoughby's* river, and which appears to be the same as that now called *Bush* river, in Harford county. This favours the supposition, that in their retreat they would naturally pursue the nearest or most convenient route to their own country, this small river pointing in that direction; from the head of which they might traverse the inland country across the present state of Pennsylvania, to that of New York, where they resided, without interfering with the great body of the Susquehanocks, who were then seated on the Susquehanah above its lowest falls. Thus, supposing these Massawomecks to have been a party of the Iroquois, it is probable, that they had now, in 1608, descended from their own country through the back parts of Pennsylvania, and had entered the Chesapeake at *Bush* river with a view of taking the Tockwoghs and the Susquehanocks in the rear, as Mr. Thompson has alleged, or of extending their depredations on other Indians along the coasts of the Chesapeake.

* This seems to afford additional confirmation, that the river, called by *Smith* the *Cuskarawaoch* was the *Nanticoke*. From an inspection of his map, and a consideration of all the circumstances mentioned by him in this stage of his voyage, "the straites of *Limbo*," through which he now passed from the eastern to the western shore, would appear to have been those now called *Hooper's* straits. He might, indeed, have passed up what is called *Hungary* or *Hunger* river, in Dorchester county, and through the narrow straits between *Hooper's* and *Barren* islands and the main land of the Eastern Shore, (his vessel being a mere flat and drawing but little water) from whence he would have emerged into the bay nearly opposite to the "high cliffs on the other side."—But, as this navigation, especially between *Barren* island and the main land, would have been too intricate and winding for him, it is most probable, that he passed through *Hooper's* straits, as expressed by him—"the straites of *Limbo*." Had he entered the bay through any other passage between those islands, which he denominated *Limbo*, lower down than *Hooper's* straits, he could not have seen the "high cliffs" above the Patuxent across the bay, nor could he easily have performed his passage across the bay to those cliffs in one day, as he appears to have done, from what he states, (the distance being from *Watkins's* Point to those cliffs nearly fifty miles) especially in such a dull sailing vessel as his flat must have been, with ragged sails patched up out of their shirts, as he says they were.

ants, leaving all the eastern shore, lowe islandes, but ouergrowne SEC. VII.
with wood, as all the coast beyond them so farre as we could
see,* the western shore by which we sayled we found all along
1608.

* *Smith's* omission to explore the Eastern Shore of Maryland, at least the midland parts of it between the Nanticoke and Sassafras rivers, has deprived us of some interesting information relative to that part of the country now composing the counties of Talbot, Queen Ann's, and Kent, together with the several islands facing the bay-coast thereof, since known by the appellations of Sharpe's Tilghman's, Poplar, and Kent islands. There were some rivers also therein, which would have well deserved his attention; particularly the *Choptank*, a name of *Indian* origin, without doubt, on which resided an Indian nation, subsequently called the *Choptanks*, who are no where noticed by him. These *Choptanks* appear (from an act of assembly of 1741, ch. 12,) to have consisted of three distinct tribes, called the *Ababeves*, the *Hutsawaps*, and *Teguassimoes*. Whether they resided altogether at one place, at the time of *Smith's* exploration of the Chesapeake, is not certain. They were found to be subsequently united in the year 1669, when an act of assembly of that date was made to appropriate to them a certain quantity of land for their exclusive use, on the south side of the *Choptank*, near Secretary's creek, in Dorchester county. The scite of their town, or principal place of their residence, at the time of *Smith's* voyage, was most probably at the same place, where their permanent residence and lands were confirmed to them by the last mentioned act of assembly. As Indian tribes or nations in America, since the settlement of Europeans among them, seem gradually to waste away and diminish in numbers in somewhat of a regular progressive ratio, without any apparent or obvious cause, the duration of the existence of any tribe seems to give a *datum*, from whence their original numbers and strength, as they were at the time of their first molestation by Europeans, may be inferred. If so, the *Choptanks* must have been remarkable for their numbers, and consequently for their proportionate strength. There are said to be at this day two or three individuals of them yet remaining, but intermixed with negro blood. These live on some spots of lands appropriated to them by an act of assembly of the year 1798, out of their appropriation in the year 1699. It is due to the memory of this tribe or nation, now extinct, or nearly so, to state the cause of this first confirmation of their lands to them in 1669. The act is entitled "An act for the continuation of peace with, and protection of, our neighbours and confederates, Indians on *Choptank* river;"—and, as is therein stated, "on account of their fidelity, in delivering some murderers, &c." all the land, described in the said act, (about three miles square) is thereby settled upon them and their heirs forever, to be held of his lordship under the yearly rent of six beaver skins." It may be proper here to observe, that no settlements of Europeans were made on any part of the Eastern Shore of Maryland, until after the year 1660, except on the isle of Kent, where settlements are said to have been made even before lord Baltimore obtained his charter. This seems to afford some ground to infer, that these lands thus settled in 1669, upon the *Choptank* Indians, comprised the scite of their place of residence in 1608, when *Smith* made his discoveries in the Chesapeake. It may be here further remarked also, that the part of the Eastern Shore, of which the counties of Queen Ann's and Talbot are now composed, is denominated on *Smith's* map, *Brooke's* forest, "overgrown with wood," as he says, and that the three islands, therein imperfectly sketched by him, as lying opposite thereto, called by him "*Winstone's* isles," must have been the isle of Kent, Poplar, and Tilghman's islands, but most inaccurately designed.

SEC. VII. well watered, but very mountainous and barren, the valleys very
 1608. fertile, but extreame thicke of small wood as well as trees, and much frequented with wolves, beares, deere, and other wild beasts. 'Wee passed many shallow creekes, but the first we found navigable for a ship, we called *Bolus*,* for that the clay in many places under the cliffs by the high water marke, did grow up in red and white knots as gum out of trees; and in some places so participated together as though they were all of one nature, excepting the colour, the rest of the earth on both sides being hard sandy grauell, which made vs thinke it *bole-armoniack* and *terra sigillata*.† When we first set sayle some of our gallants doubted nothing but that our captaine would make too much haste home, but having lien in this small barge not above twelve or fourteen dayes, oft tyred at the oares, our bread spoyled with wet so much that it was rotten, (yet so good were their stomachs that they could digest it,) they did with continuall complaints so importune him now to returne, as caused him bespeake them in this manner.

"Gentlemen, if you would remember the memorable history of Sir Ralph Layne, how his company importuned him to proceed in the discovery of Moratico, alledging that they had yet a dog, that being boiled with sassafras leaues, would richly feed them in their returnes; ‡ then what a shame would it be for you (that have bin

* This has been generally deemed to have been the *Patapsco*, which opinion seems to be warranted by *Smith's* map. But it may be remarked, that if he "sayled 30 leagues northwards from *Riccard's* cliftes," accounting three miles to the league, his distance ninety miles would have carried him quite to the mouth of the *Susquehanah*. This circumstance, however, seems rather to corroborate the supposition, that what he called *Bolus* river was the *Patapsco*, and not any river lower down on the western shore, as the *Severn* for instance, where is to be found also his *Bole-Armoniack*, or *Terra Sigillata*, from which he took his term—*Bolus*. It may be moreover observed, that the *Severn* river cannot well be said to be "navigable for a ship," on account of a shoal at the entrance.

† *Bole-Armoniack*, or the *Armenian Bole*, is a species of earth, originally brought from *Armenia*, near the head of the *Euphrates*, and sometimes from the isle of *Lemnos*. It was formerly supposed by chemists and physicians to possess medicinal qualities. It was commonly put up in little flat cakes, round on one side, flat and sealed on the other, and hence called *Terra Sigillata*. It is said to be now disused in modern pharmacy. The chemists or physicians of *Baltimore*, however, might do well in examining its properties. One reason of its disuse in *England* might possibly have been its frequent adulteration by the druggists there, in mixing red ochre, and sometimes brick dust with it, to both which it has a considerable resemblance in colour.

‡ This alludes to governor *Lane's* fruitless expedition up the *Moratice*, now called the *Roanoke*, in *North Carolina*, about the year 1585, as has been herein-before stated.

so suspicious of my tendernesse,) to force me returne, with so much provision as we have, and scarce able to say where we have beene, nor yet heard of that we were sent to seeke? You cannot say but I have shared with you in the worst which is past; and for what is to come, of lodging, dyet, or whatsoever, I am contented you allot the worst part to myselfe. As for your feares that I will lose myselfe in these unknowne large waters or be swallowed up in some stormie gust, abandon these childish feares, for worse than is past is not likely to happen, and there is as much danger to returne as to proceede. Regain, therefore, your old spirits, for returne I will not (if God please) till I have seene the Massawomeks, found Patawomek, or the head of this water you conceit to be endlesse. Two or three dayes we expected winde and wether, whose aduerse extremities added such discouragement, that three or foure fell sicke, whose pitiful complaints caused vs to returne, leaving the bay some nine miles broad, at nine and ten fadome water.*

“The 16th of June we fell with the river *Patawomek*; feare being gone, and our men recovered, we were all content to take some paines, to know the name of that seven mile broad riuier:† for thirtie myles sayle, we could see no inhabitants: then we were conducted by two savages up a little bayed creeke, towards *Onawmanient*,‡ where all the woods were layd with am-

* The place from which they now put back, we may suppose to have been somewhere a little below what is now called *Pool's* island, the bay there nearly corresponding with the breadth above assigned, and then narrowing considerably from that island upwards. This part of the above journal shews, how indistinct and inaccurate, especially in the order of time, most of the historians of Virginia, particularly *Burk*, have been in their accounts of these two voyages up the Chesapeake by *Smith*. The real cause of his return back at this time, before he had explored the head of the Chesapeake, the grand desideratum of his voyage, he himself expressly states to have been, not entirely the want of provisions, but the “complaints” of those of his crew, who were sick.

† As *Smith* invariably spells the name of the river, now universally called and written the *Patowmack*, as above—the *Patawomek*, it seems to follow, that the former term is a corruption of the latter. It appears to have been altered for the sake of the sound, as more agreeable to an English ear. It may be observed, however, that the *Massawomeks* or Six Nations had a different name for it. They called it—the *Cohongoronta*, a name of more sonorous rotundity than either of the others. See the speeches of two chiefs of the nations at the treaty held with them at Lancaster in Pennsylvania, in June, 1744, stated at large in *Colden's* Hist. of the Five Nations, pp. 107, 112. But these chiefs appear to have meant the upper parts of the Patowmack, where they had extended their conquests.

‡ No place of this name is laid down on *Smith's* map. If we take the distance of “thirty myles sayle,”—to have been from the mouth of the river, it would bring them to somewhere about *Nominy* bay, on the Virginia side of the river, which possibly might be the “little bayed creeke” alluded to above. This also is where Mr. Jefferson has fixed their scite. It may be remarked, that

SEC. VII. 1608. buscado's to the number of three or foure thousand salvages, so strangely paynted, grimed and disguised, shouting, yelling and crying as so many spirits from hell could not have shewed more terrible. Many bravado's they made, but to appease their fury, our captaine prepared with as seeming a willingnesse as they to incounter them. But the grazing of our bullets upon the water (many being shot on purpose they might see them,) with ecco of the woods so amazed them, as downe went their bowes and arrowes; (and exchanging hostage,) *James Watkins* was sent six myles up the woods to their king's habitation. We were kindly used of those salvages, of whom we understood, they were commanded to betray us, by the direction of *Powhatan*, and he so directed from the discontents at *James-towne*, because our captaine did cause them stay in their country against their wills.*

“The like incounters we found at *Patawomek*,† *Cecocawanee*,‡

when Smith was taken prisoner on the Chickahominy in the year before this, the Indians, before they carried him to Powhatan at Werowacomoco, led him quite across the state to several towns, both on the Rapahanock and on the Patowmack, particularly to the *Onawmanients* on the last mentioned river, to exhibit him in a species of triumph, as we may suppose. He must, therefore, have had some previous knowledge of the Onawmanients.

* This expression—“against their wills,”—seems to be susceptible of a double meaning. It might possibly be construed to mean—against the wills of the *Indians*. But by adverting to the history of Virginia at this period of time, it appears, that there were now “discontents at *James-towne*,” raised by some of the colonists there, who were desirous of quitting the country and returning to England, and had actually planned a scheme for seizing upon a shallop for that purpose, but by *Smith's* influence they had been prevented from so doing, and obliged to “stay in the country against their wills.” The above sentence is also some corroboration if it needed it, that *Powhatan's* authority extended over all these tribes or nations on the *Patowomek* at least on the Virginia side thereof.

† This *Indian* town is said to have been on the spot, where the Virginians subsequently laid out a town, which they called New Marlborough, on a peninsula in Stafford county, Virginia, formed by the Patowmack river and a large creek, called the Patowmack creek. It must have been an Indian town of considerable population, and the tribe or nation numerous, as they either gave their name to their noble river upon which they were seated, or they, as the most considerable tribe on its banks, took their name from the river. At this time, as stated by *Smith* in another place, they were able to turn out two hundred warriors. According to Mr. Jefferson's conjectural proportion of warriors to inhabitants, at this period of time, to wit, as three to ten, the population of the *Patowomeks* must have been at this time about six hundred and sixty-six men, women, and children. But it seems from a late document written (in 1820) by Mr. McKenney, superintendant of Indian trade, that the usual computation at this day is—“one warrior for every ten souls.” This would make the population of the *Patowomeks* to have consisted of two thousand souls.—In Proud's Hist. of Pennsylv. vol. ii. p. 297, they were computed in the year 1759 as affording one warrior in every five inhabitants; which comes nearer to Mr. Jefferson's supposition.

‡ An *Indian* town, of this name, is laid down by *Smith* on his map, very low

and diuers other places : but at *Moyaonees*,* *Nacochtant*,† and *Toags*,‡ the people did their best to content us. Having gone so high as we could with the bote, we met diuers salvages in canowes, well loaden with the flesh of beares, deere and other beasts, whereof we had part, here we found mighty rocks, growing in some places above the ground as high as the shrubby tree, and diuers other solid quarries of diuers tinctures : and diuers places where the waters had falne from the high mountaines they had left a tinctured spangled shurfe, that made many bare places seeme as gilded. Digging the growne above in the highest clifts of rocks, we saw it was a claie sand so mingled with yellow spangles as if it had beene half pin-dust.§ In our returne inquiring still for this *Matchqueon*,|| the king of *Patawomeke* gaue vs guides to conduct us up a little river called

SEC. VII.
1608.

down the river, not far from its mouth, and on the Virginia side. The scite of it seems to answer, as nearly as may be, to the south-east point at the mouth of the *Coan* river, in Northumberland county, Virginia. The word *Coan* seems to be an abridgment of *Cecocawanee*. It is there fixed also by Mr. Jefferson.

* From the location of the *Moyaonees* on Smith's map, their town, noted as the residence of a king, must have been somewhere about Broad-creek, in Prince George's county, on the Maryland side of the Patowmack, and about two leagues or six miles above the Indian town of the *Tauxenents*; which last mentioned town, according to Mr. Jefferson was "about General Washington's," in Fairfax county, Virginia.

† *Nacochtant*, as laid down by Smith on his map, appears to have been but a small distance below the mouth of the *Eastern Branch*, at the city of Washington, and on the Maryland side of the Patowmack.

‡ The scite of the *Toags* is not laid down by Smith on his map. They are mentioned, however, in some documents on the Maryland records, (particularly in Lord Baltimore's instructions of August 6th, 1650, hereinafter more particularly stated,) under the denomination of *Doages*; from which they appear to have been a tribe of Indians inhabiting some where, in Charles county, Maryland, about the great bend of the Patowmack called Maryland Point, or on the point of land in the said county, formed between Mattawoman creek or run and the Patowmack river, commonly called *Indian Point*.

§ It is evident, from the two preceding sentences, and the expression—"Having gone so high as we could with the bote,"—that Smith and his party had now ascended the Patowmack to where the city of Washington now stands. Although Smith has professed in his history on several occasions his contempt for the futile anxiety exhibited by the early Virginia colonists for the discovery of a gold mine in the country, yet we here perceive a symptom, (perhaps only with some of his present followers,) of that anxiety excited by the appearance of some "yellow spangles" in the soil. These colonists, under their repeated disappointments in this respect must have had abundant cause to have acknowledged the truth of the apothegm—All is not gold that glitters.

|| The meaning of this term we must confess to be unintelligible to us. From the whole context it appears to have meant a *mine* of *Antimony*, of which they were in search.

SEC. VII. *Quiyough*, up which we rowed so high as we could.* Leaving
 1608. the bote, with six shot, and divers salvages, he marched seven or eight myle before they came to the mine: leading his hostages in a small chaine they were to have for their paines, being proud to be so richly adorned. The mine is a great Rocky mountaine like *Antimony*; wherein they digged a great hole with shells and hatchets: and hard by it, runneth a fayre brooke of *christol*-like water, where they wash away the drosse and keepe the remainder, which they put in little baggs and sell it all over the country to paint there bodyes, faces, or idolls; which

* This river, here called the *Quiyough*, is evidently from Smith's map, the *Acquia* creek, a little above the before mentioned town of the Patowomecks on the Virginia side of the Patowmack. And here it will be proper to observe upon an error, which the author of the anonymous History of Maryland before mentioned appears in this instance to have fallen into, when he says,—“On the north side of the Eastern Branch, which Smith mistook for the main river, were seated the Tauxenents;” whom he states to have been a tribe of Maryland Indians. The author himself has mistaken the *Quiyough*, as laid down on Smith's map, “for the main river;” which Smith certainly did not intend. The expression of Smith—“a little river called *Quiyough*,”—clearly indicates, that he meant “a little river” distinct from the Patowmack, which he, in several other places, has distinguished by the title of “the great river.” In another part of Smith's History, (to wit, in his summary account of Virginia, herein after more fully stated,) he has expressed himself so as to leave no doubt upon the subject. “Here,” says he, (to wit, at the town of the *Patowomecks*,) “doth the river divide itself into three or four convenient branches. “*The greatest of the least is called Quiyough*, trending north-west, but the river itself turnelh north-east, and is still a navigable stream. On the western side of this bought is *Tauxenent* with 40 men.”—The meaning of which undoubtedly is—that, supposing the river to divide itself into three several branches, according to Smith, at or near to the town of the Patowomecks, since called Marlborough, which is where Mr. Jefferson has placed them, “the greatest of the least” of these branches, which is exclusive of the largest branch—the main river, “is called *Quiyough*. The similarity of sound between the names *Quiyough* and *Acquia*, together with the location of the latter on Madison's map of Virginia compared with that of the former name on Smith's map, warrants us in supposing, that the creek, now called *Acquia* creek, is that branch called by Smith the *Quiyough*. It is observable also, that this creek, called the *Acquia*, on Madison's map, is immediately above the place called *Marlborough*, supposed to be the ancient scite of the Patowomecks town, as the *Quiyough* is on Smith's map. Agreeably, therefore, to what Smith has further said in the passage just quoted, the *Tauxenents* were seated “on the western side” of the great bend (or “bought”) of the main river—Patowmack, that is, on the Virginia side of the Patowmack, and not on the Maryland side, or “on the north side of the Eastern Branch,” as the anonymous author has stated. To this may be added Mr. Jefferson's authority. In his arrangement or table of the Virginia Indians, he has placed the *Tauxenents* “in Fairfax county, about General Washington's.” Smith, therefore, did not mistake “the Eastern Branch for the main river,” nor were the *Tauxenents* “seated on the north side of the Eastern Branch,” or in Maryland, as stated in this anonymous History.

makes them looke like Blackmoores dusted over with silver. SEC. VII.
 With so much as we could carry we returned to our bote, kinde- 1608.
 lyrequiting this kinde king and all his kinde people.—The cause of
 this discovery was to search this mine, of which *Newport* did
 assure vs that those small baggs (we had given him) in *England*
 he had tryed to hold half silver; but all we got proved of no
 value;* also to search what furr, the best whereof is at *Cus-*
carawaocke, where is made so much *Rawranoke* or white beads
 that occasion as much dissention among the salvages, as gold
 and silver amongst Christians;† and what other minerals, rivers,

* Although the discovery of a silver mine is not thought in modern times to be a national blessing, yet, as there appears to be strong grounds to suppose the ore of this mine, which the Indians used as a pigment, might have been that of antimony, which from its utility in many of the fine arts, particularly in type-foundry, might be deemed of more value than a mine of silver, a re-discovery or re-examination of it might not be thought altogether frivolous or useless. If the *Acquie* creek, in Stafford county, Virginia, is the same as the “little river here called *Quiyogh*,” as it appears, without doubt, to be, and *Smith* and his party, after going as high up the creek as their boat could go, travelled from thence by land seven or eight miles to the mine, denoted as “a great rocky mountaine,” we should suppose, that this mine might still be discovered, and its ore analysed by chemists.

† There seems to be here additional confirmation of the supposition, herein before hazarded, that the *Cuscarawaoke* was the present *Nanticoke* river. *Smith* had before stated, that the nations or tribes on this river were “the best Marchants of all other Salvages.” *Rawranoke*, (by more modern writers written—*Roanoke*,) or white beads, was their money; the use of white is generally indicative of a people disposed to trade or commerce. According to *Beverly*, who compiled his History of Virginia about the beginning of the eighteenth century, when the Indians still existed in Virginia in considerable numbers, preserving their ancient usages, there were two species of a *medium* of traffick among them,—one, the more valuable, was called *Peake*,—the other *Roenoke*; (the *Rawranoke* of *Smith*;) the former was made of the *conk*-shell, (or perhaps more properly written *chonck*-shell;) the latter—*Roenoke* “was made of the *cockle*-shell, broken into small bits with rough edges, drilled through in the same manner as beads.” (See this subject more copiously enlarged upon hereafter, in note xvi. at the end of this volume.) These materials for their money, either *chonck* or *cockle*-shells, were not to be had from any of the waters of the Chesapeake, but were to be found in abundance on the sea-shores of the Atlantic, particularly the *cockle* shell. The situation of the *Cuscarawaocks*, if on the head-waters of the Nanticoke, about Broad-creek, as we have herein supposed, would give to them a more ready and convenient communication with the tribes of Indians situated on the Atlantic coast, among others with those of *Chingoleague*, the few remains of whom are stated by *Beverly* in his History, (p. 199,) as being at that time when he wrote in alliance with the Maryland Indians. Thus connected with the Indians on the Atlantic coast, these *Cuscarawaocks* would be enabled to supply all the Indians on the Chesapeake with *Peake* and *Roenoke*; and from that accidental circumstance of situation they would become in some sort a trading people. To this may be added, that the Nanticoke, from the large marshes on its margin, abounded in those animals, the furs of which were held in estimation, as beavers,

SEC. VII. rocks, nations, woods, fishings, fruites, victuali and what other

1608. commodities the land afforded : and whether the bay were endlesse or how farre it extended ;* of mines we were all ignorant, but a few beauers, otters, beares, martins and minkes we found, and in divers places that abundance of fish, lying so thicke with their heads above the water, as for want of nets (our barge driuing amongst them) we attempted to catch them with a frying pan ; but we found it a bad instrument to catch fish with ; neither better fish, more plenty, nor more variety for small fish, had any of vs euer seene in any place so swimming in the water, but they are not to be caught with frying pans ; some small cod also we did see swim close by the shore by *Smith's* isles, and some as high as *Riccard's* clifts. And some we have found dead upon the shore.

“To express all our quarrels, trecheries, and encounters amongst those salvages, I should be too tedious : but in breefe, at all times we so incountred them and curbed their insolencies, that they concluded with presants to purchase peace ; yet we lost not a man : at our first meeting our captaine euer observed this order to demand their bowes and arrowes, swordes, mantalls and furs, with some childe or two for hostage, whereby we could quickly perceive, when they intended any villany. Having finished this discovery (though our victuall was neere spent,) he intended to

otters, minks, musk-rats, &c. This also would necessarily give the Indians on the Nanticoke great advantages in traffick, compared with those on the western shore of Maryland or on the eastern shore thereof above the Chester river.—These conjectures are all corroborated by a fact to be ascertained at this day. I have been credibly informed, that there are still existing at this day, on the north side of the Nanticoke, large remains of an Indian town, answering as nearly as may be to the location of the *Nantiquacks* on *Smith's* map. Among these remains is a hillock, or high piece of ground, insulated as it were in the midst of a morass or woody swamp of some considerable extent. On this hillock, which tradition among the whites has handed down as the burying-place of the Indians, is to be found an immense quantity of what the white inhabitants call beads, but evidently the Peake and Roenoke of the Indians.

* From this and another passage in the above account of *Smith's* exploration of the Chesapeake clear proof results, that the colonists of Virginia, as well as the members of the Virginia company in England, still entertained at this time strong ideas of the narrowness of the American continent, and that a convenient passage to the South sea through some of the waters emptying into the Atlantic, would soon be discovered. It is evident, that this was one main object of *Smith's* excursion up the Chesapeake ; for, in the latter part of this account of this his *first* voyage up the Chesapeake, it is stated, that, when on their return to James-town they found the colonists in the greatest disorder and dissention,—“the good news of our discovery, and the good hope we had by the salvages relation, that *our bay had stretched into the south sea*, or somewhat neare it, appeased their fury.”

see his imprisonment acquaintances upon the river of Rappah-
 nock, by many called *Toppahanock*,* but our bote by reason of
 the ebbe, chancing to ground upon a many shoules lying in the
 entrance, we spyed many fishes lurking in the reedes: our cap-
 taine sporting himself by nayling them to the grownd with his
 sword, set vs all a fishing in that manner: thus we tooke more
 in one houer than we could eate in a day. But it chanced our
 captaine taking a fish from his sword (not knowing her condi-
 tion) being much of the fashion of a Thornback, but a long tayle
 like a riding rodde, whereon the middest is a most poysoned
 sting, of two or three inches long, bearded like a saw on each
 side, which she strucke into the wrist of his arme neare an inch
 and a halfe: no bloud nor wound was seene, but a little blew
 spot, but the torment was instantly so extreame, that in foure
 houres had so swollen his hand, arme, and shoulder, we all with
 much sorrow concluded his funerall and prepared his graue in
 an island by, as himselfe directed; yet it pleased God by a pre-
 cious oyle Doctor *Russell* at the first applyed to it with a probe,
 (ere night) his tormenting paine was so well asswaged, that he
 eate of the fish to his supper, which gaue no less joy and con-
 stant to vs than ease to himselfe, for which we called the island
Stingray isle after the name of the fish.”†

“It would be unnecessary to insert here the remaining part of
 this account of *Smith’s* “first voyage” for a discovery of the Ches-
 apeake, inasmuch as it relates principally to their return from the
 mouth of the Rappahanock to James-town, where they arrived on

* These “imprisonment acquaintances” of captain Smith, on the Rappahanock,
 appear to have been the “*Nantaughtacunds*,” seated on the right bank or south
 side of the Rappahanock, a considerable distance up that river, (according to
 Mr. Jefferson, on the Port Tobacco creek, which forms a part of the borders of
 Essex and Caroline counties in Virginia,) to which *Indian* town, among a num-
 ber of others, Smith was led by the Indians after they had taken him prisoner in the
 year before.

† From the language of the above account, particularly relative to *Smith* him-
 self, it may be clearly inferred, that the narrative of this his first voyage was
 not altogether drawn up by himself. Accordingly, at the end of this chapter in
 his history—“Chap. V.”—we find the following subscription:—“Written by
Walter Russell, Anas Todkill and *Thomas Momford* ;”—whose names, with their
 respective additions, have been herein first before mentioned. It would appear,
 therefore, that Smith had kept no journal of his “voyages” up the Chesapeake,
 but when he returned to England, and undertook to compile his General History
 of Virginia published in 1629, he formed the narrative thereof principally from
 the “written” account of the men, whose names are thereto subscribed, together
 most probably with such remarks upon, and remembrances of, the facts as his
 own memory of them suggested.

SEC. VII.
 1608.

SEC. VII. the 21st of July; having been absent on their excursion nineteen days. As the discoveries made in this *first* voyage were evidently very imperfect, and unsatisfactory even to *Smith* himself, he immediately on his return prepared to set out again on another excursion for the further exploration of this capacious bay. Accordingly, within the space of only three days, having resettled the government of Virginia in the hands of Mr. Scrivener, (a gentleman more to be depended upon than Ratcliffe, the preceding president of the council,) and having calmed in some measure the discontents of the colonists there, he again "imbarked himself to finish his discovery," possibly in the same small vessel as before, after some repairs, though not altogether, as it appears, with the same crew.

"CHAPTER VI." (of "*The General Historie of Virginia.*")

"*What happened the second voyage in discovering the Bay.*"

"The 24th of July, captaine *Smith* set forward to finish the discovery with twelve men: their names were

"Nathaniel Powell,	}	<i>Gentlemen.</i>
Thomas Momford,		
Richard Fetherstone,		
Michell Sicklemore,		
James Bourne,		
Anthony Bagnell, <i>Chir.</i>		

"Jonas Profit,	}	<i>Souldiers.</i>
Anas Todkill,		
Edward Pising,		
Richard Keale,		
James Watkins,		
William Ward,*		

"The wind being contrary caused our stay two or three dayes at *Kecoughtan*: (now called *Hampton* in Virginia:) the king feasted vs with much mirth, his people were perswaded we went purposely to be revenged of the *Massawomeks*. In the evening we fired a few rackets, which flying in the ayre so terrified the

* Of these twelve man, who accompanied Smith in this his *second* voyage up the Chesapeake, Messrs. Momford, Fetherston, Sicklemore, and Bourne, (gentlemen,) and Profit, Todkill, Keale, and Watkins, (soldiers) were of his former party. Anthony Bagnall, *Chirurgion*, (instead of Doct. Russell,) together with Nathaniel Powell, of the "gentlemen," and Pising and Ward, "soldiers," were new hands in this *second* expedition.

poor salvages, they supposed nothing impossible we attempted; and desired to assist us. The first night we anchored at *Sting-ray* isle. The next day crossed *Patawomeks* river, and hasted to the river *Bolus*. We went not much further beffore we might see the bay to divide in two heads, and arriving there we found it divided into foure,* all which we searched so farre as we could sayle them. Two of them we found inhabited,† but in crossing the bay we incountred 7 or 8 canowes full of *Massawomeks*,‡ we seeing them prepare to assault us, left our oares and made way with our sayle to incounter them, yet were we but fieve with our captaine that could stand, for within 2 dayes after we left *Ke-*

SEC. VII.
1608.

* It is apparent from Smith's map, that the "foure heads," into which he says the bay appeared to him to be divided, must have been the four rivers, since called the *Susquehanah*, the *North East*, the *Elk*, and *Sassafras* rivers in Maryland.

† It appears in another part of Smith's History, which will be hereinafter stated, that the first of these two rivers, at the head of the bay, so found by him to be inhabited, was the *Susquehanah*, on which, he says, "were seated the *Susquehanocks*," but they "could not get two myles up it with their boat for rocks." The other river, which he now found inhabited, as he says, must have been the *Tockwogh*, which seems to have been that now called the *Sassafras*, as will presently appear.

‡ It appears also from another part of Smith's history, which will be herein after more fully stated, that the first of these rivers, at the head of the bay, examined by him, was the *Susquehanah*, on which he says were seated the *Susquehanocks*, to which he adds,—"*neare it*," (that is, near the *Susquehanah*) "*north and by west* runneth a creeke a myle and a halfe." This creek answers, according to our best modern maps of the State, compared with that of Smith, to the creek now called the *Principio* creek; which, although it runs from the head of the bay in nearly a due north course, yet it being the next water-course to the *Susquehanah*, and lying to the eastward from it, was most probably the creek here alluded to by Smith. In corroboration of this, it is to be remarked, that the course, which the *Susquehanah* bears from the head of the bay, according to Smith's location of it, is nearly north-west. This creek, then, which he next entered, running north and by west, must have emptied into the Chesapeake to the eastward of the mouth of the *Susquehanah*, and consequently must have been the *Principio*. He next proceeds to state, that, "we went up another small river like a creeke 6 or 7 myle;"—which must have been either the *North East* river or the *Elk*: most probably the former, from the circumstance of its being "like a creeke."—"From thence," he says, returning we met 7 canowes of the *Massawomeks*." The "crossing the bay," then, as he says in the text above, must have been from either the *North East* or *Elk* rivers to the western shore, some where most probably near to and a little above or below *Spesutia* island. The circumstance, of the *Massawomeks* going up *Willoughby's* or *Bush* river, after their meeting with Smith, induces a supposition, that the place of their meeting could not have been at a great distance from the mouth of that last mentioned river; (probably a little above it;) or else Smith could not have ascertained the fact of their going up that river; from whence Smith next entered the *Tockwogh*; which again would seem to confirm our supposition, that the *Tockwogh*, mentioned by Smith, was what is now called the *Sassafras*, and not the *Elk*, as will presently be further stated.

SEC. VII. *coughtan*, the rest (being all of the last supply,*) were sicke al-
 1608. most to death, until they were seasoned to the country. Having shut them under our tarpawling, we put their hats upon stickes by the barges side, and betwixt two hats a man with two peeces, to make us seeme many, and so we thinke the *Indians* supposed these hats to be men, for they fled with all possible speed to the shore, and there stayed, staring at the sayling of our barge till we anchored right against them. Long it was ere we could draw them to come unto us. At last they sent two of their company unarmed in a canow, the rest all followed to second them if neede required. These two being but each presented with a bell, brought aboard all their fellowes; presenting our captaine with venison, beares flesh, fish, bowes, arrowes, clubs, targets,† and beare skinnes. We understood them nothing at all, but by signes, whereby they signified unto vs they had beene at warres with the *Tockwoghes*, the which they confirmed by shewing vs their greene wounds, but the night parting us, we imagined they appointed the next morning to meete, but after that we never saw them.†

“Entring the river of *Tockwogh*,‡ the salvages all armed, in

* Meaning those colonists, who had arrived in Virginia, with captain *Nelson*, in the *Phoenix*, in the spring of 1608.

† The structure of these “targets,” or shields, is thus described by *Smith*, in another place—“They are made of little small sticks wouen betwixt strings of their hempe and silke grasse, as is our cloth, but so firmly that no arrow can possibly pierce them.”—*Smith* and his party afterwards found these targets or shields of considerable use to them in their defence from the arrows of the *Indians*, not only by fixing them on the gunwales of their vessel, but by wearing them on their arms. The use of these targets or shields seems to have been peculiar to these *Massawomeks*; few, if any, of the North American *Indians* beside these, being known to use them, even before they had been furnished with fire-arms, except the *Susquehanocks*, who most probably adopted the use of them from their deadly enemies—these *Massawomecks*. It was possibly owing to this invention of defence in their tactics, that these *Massawomecks* were so formidable to other *Indians* before fire-arms came in use generally among them, being thus rendered, as it were, invulnerable to the weapons of their common enemies. The fire-arms, with which they were within a few years from this time furnished by the Dutch of New York, must, however, have quickly superseded their use of shields or targets.

‡ They went up the *Willoughby* or *Bush* river, as he states in another place.

‡ In the before mentioned anonymous *History of Maryland*, the author thereof in his summary account of the *Maryland Indians*, after mentioning “the *Susquehanah* tribe,” thus proceeds in his statement,—“Crossing to the eastern shore, we next meet the *Zackwogh* tribe, who resided on *Elk* river, and counted one hundred warriors; after them, we meet the *Osinies*, who probably dwelt on the modern *Sassafras* river, and led against their enemies sixty men.” We must again resort to a supposition of a typographical error in the appellation,

a fleete of boats, after their barbarous manner, round invironed vs; so it chanced one of them could speake the language of *Powhatan*, who perswaded the rest to a friendly parley. But when they saw vs furnished with the *Massawomeks* weapons, and we faining the invention of *Kecoughtan*, to have taken them perforce;* they conducted us to their pallizadoed towne,† mantelled with the barkes of trees, with scaffolds like mounts, brested about with brests very formally. Their men, women and children, with daunces, songs, fruits, furies, and what they had, kindly welcomed vs, spreading mats for vs to sit on, stretching their best abilities to expresse their loves.

SEC. VII.
1608.

which the author or printer has here given to the first mentioned of these tribes; as in *Smith's History* and map that tribe is throughout denominated either *Tockwogh* or *Tockwhogh*; supposing that this author meant, under the name *Zackwogh*, the same tribe as that called by *Smith* the *Tockwoghs*, there being no other mentioned by that *original* historian, to which he could have alluded, it would appear, that he has committed an error in stating that they "resided on *Elk* river." We have just before shown, that from several passages of *Smith's History*, relative to this part of his voyages up the Chesapeake, that his meeting with the *Massawomecks* could not have been much above the *Willoughby* or *Bush* river on the western shore. In another place of his *History*, where he makes a summary of his discoveries in the Chesapeake, which will be hereinafter stated, after mentioning this meeting with the *Massawomecks*, he says—"the next day we discovered the small river and people of *Tockwhogh*, trending eastward." It being near night, (as he says, "the night parting us,") when the *Massawomacs* left them and went up *Bush* river, *Smith* and his party must have remained, most probably, stationary the whole of that night where they then were, on the western shore of the bay, not much above *Bush* river, and the next day discovered the river of *Tockwogh*. This circumstance seems to afford a strong ground for us, on which to rest our opinion, that the *Tockwogh* of *Smith* was the modern *Sassafras* river. He adds also, that it was a "small river," and the *Sassafras* is certainly a smaller river than the *Elk*. Also, that the *Tockwogh* trended "eastward;" the *Sassafras* is now known to run nearly due east and west; but the *Elk*, a larger river, trends from the bay up into the country almost in a direct *north-east* course. Besides, whoever will examine *Smith's* map will see, that the southernmost river of the four heads of the bay, alluded to by him, and on which river he has placed the town of the *Tockwoghs*, corresponds with the present *Sassafras* river nearer than any other now known; and that the seat of the *Osinies* was evidently on the *Chester* river, as will hereinafter more plainly appear. N.B. The author in his *Introductory* volume, already published, has expressed his *conjecture*, that the *Tockwogh* of *Smith* might be the modern *Chester* river. He had not then been able to procure *Smith's History*; on obtaining which, this supposition was immediately done away.

* This alludes to what was told to the *Kecoughtans*, (at *Hampton*,) by *Smith* and his party, on their return from their first excursion up the Chesapeake, to wit,—“what spoyle they had got and made of the *Massawomeks*.”

† This town, or king's residence, as denoted by *Smith* on his map, is placed by him on the left bank or south side of the river called by him the *Tockwogh*. Supposing the *Sassafras* to be the same as the *Tockwogh*, the town would have been somewhere a little below *George-town*, in *Kent* county, and on the same side of the river.

SEC. VII. "Many hatchets, knives, peeces of iron, and brasse, we saw
 1608. amongst them, which they reported to have from the *Sasquesahanocks*, a mightie people and mortall enemies with the *Massawomeks*.* The *Sasquesahanocks* inhabit upon the chiefe spring of these four branches of the bayes head, two dayes journey higher than our barge could passe for rocks,† yet we prevailed with the interpreter to take with him another interpreter, to perswade the *Sasquesahanocks* to come visit vs, for their language are different.‡ Three or four dayes we expected their returne, then sixtie of those gyant-like people came downe, with presents of venison, tobacco pipes three foot in length, baskets, targets, bowes and arrowes. Five of their chiefe *Werowances* came boldly aboard vs to crosse the bay for *Tockwogh*, leaving their men and canowes ; the winde being so high they durst not passe.§

"Our order was daily to haue prayer, with a psalme, at which

* The *Susquehanocks* must, without doubt, have obtained these hatchets, &c. from some of the northern nations of Indians, who were then in the habit of trading with the French on the St. Lawrence. They could not have then obtained them from the Dutch, which they afterwards did in great abundance, as no Dutch settlements then existed in North America. Hudson unquestionably did not discover his grand river of the present State of New York until the year 1609.

† Smith has denoted in his map the town or king's residence of the *Susquehanocks* as being at this time, 1608, on the left bank or east side of the *Susquehanah*, nearly seven leagues, or about twenty English miles up the *Susquehanah*; which would seem to have been somewhere nearly opposite to the mouth of what is called *Muddy* creek, on the west side of the *Susquehanah*, in Pennsylvania. The *falls*, where he was stopped in his ascent, he lays down as being about four leagues or twelve miles up the river ; but by our modern maps the distance from the mouth of the river to the falls appears to be only four or five miles.

‡ Smith, in another place of his History, (which will be herein after stated,) has enumerated the "many severall nations of sundry languages, that environed Powhatan's territories."—Among these he mentions—"the *Sasquesahanocks* and the *Tockwoghes*," as differing in their languages not only from the *Powhatans*, but from each other. The "interpreter" first mentioned above, who was to take with him "another interpreter," was most probably the *Tockwogh* Indian, as before mentioned, who could "speak the language of Powhatan."—By taking with him another *Tockwogh*, who understood the *Susquehanock* language, they could both together interpret to Smith and his party ; some of whom we must necessarily suppose from what is above stated, understood the *Powhatan* language.

§ From what is stated in these two last sentences above, we must necessarily suppose, that Smith and his party, after "entering the river of *Tockwogh*," and visiting the "towne," returned to the *Susquehanah* river, with the two interpreters above mentioned, and there waited till the *Susquehanocks* came down the river, where the five *Susquehanock Werowances* embarked with them for the *Tockwogh*.

solemnitie the poore salvages much wondered, our prayers being done, a while they were busied with a consultaion* till they had contrived their businesse. Then they began in a most passionate manner to hold up their hands to the sunne, with a most fearful song, then embracing our captaine, they began to adore him in like manner : though he rebuked them, yet they proceeded till their song was finished : which done with a most strange furious action, and a hellish voyce ; began an oration of their loues ; that ended, with a great painted beares-skin they covered him : then one ready with a great chayne of white beads, weighing at least six or seaven pounds, hung it about his necke, the others had 18 mantels, made of diuers sorts of skinnes sowed together ; all these with many other toyes they layd at his feete, stroking their ceremonious hands about his necke for his creation to be their governour and protector, promising their aydes, victualls, or what they had to be his, if he would stay with them, to defend and revenge them of the *Massawomeks*.—But we left them at *Tockwhogh*, sorrowing for our departure, yet we promised the next yeare againe to visit them. Many descriptions and discourses they made vs, of *Atquanachack*, *Massawomek*, and other people, signifying they inhabit upon a great water beyond the mountaines, which we vnderstood to be some great lake, or the river of *Canada* : and from the French to haue their hatchets and commodities by trade.† These know no more of the territories

SEC. VII.
1608.

*Whether this be a typical error, or the use of an obsolete word, it certainly means the same as the word—consultation. The latin verb—*consulo*—seems to be the root of the term.

† From the structure of the above sentence, some doubt arises, whether “their hatchets and commodities by trade,” were procured immediately from the French by the Susquehanocks themselves, or through the intermediate traffick of the *Massawomeks*, or some other northern Indian tribes, with the French. The circumstance of a war then existing between the Susquehanocks and the *Massawomeks* seems to preclude a supposition of the latter case ; but it is possible, that even in case of the war, a few articles of that kind might have been obtained from the *Massawomeks* either by capture or some other means, without supposing a traffick carried on by the Susquehanocks with the French in *Canada*. It has been before stated, in the Introduction to the History, (already published,) that the French commenced their fur-trade with the Indians on the St. Lawrence about the year 1600, and had annually continued it, (it being found to be very profitable,) until this year of Smith’s exploration of the Chesapeake, 1608, in which year also Champlain laid the foundation of Quebec. As Hudson did not discover his grand river of the present State of New York until the year 1609, the Dutch were as yet guiltless of furnishing the Iroquois with fire-arms or any other commodities. From the circumstances attending the remarkable battle between the Iroquois and the Adirondacs and Hurons on lake Champlain in the year 1610, with the two latter of whom Champlain and a few Frenchmen,

SEC. VII. of *Powhatan*, than his name, and he as little of them,* but the
1608. *Atquanachuks* are on the ocean sea.†

“The highest mountaine we saw northward we called Peregrine’s mount,‡ and a rocky river, where the *Massawomeks* went

as allies, fought with their fire-arms, the Iroquois (or Massawomeks if they were the same) were then entirely ignorant of their use; except such knowledge as they might have acquired from the accidental observation they might have made of them, when they met with Smith in the Chesapeake in the year 1608. Useful articles of domestic life, such as hatchets, &c. might have been procured from the French by the Iroquois or Massawomeks, before their hostilities in 1610, either mediately through other Indian tribes or immediately by themselves.

* The Susquehanocks were, however, subsequently found to be at war with the Yoamacoës, seated on the St. Mary’s river, in St. Mary’s county, Maryland, when the first Maryland colonists arrived there in the year 1634. These Yoamacoës, as well as all the Indians in the peninsula between the Patowmack and the Patuxent, were said to have been in subjection to Powhatan, and consequently lived within his “territories” by conquest. At what period between the years 1608 and 1634, the Susquehanocks commenced their warfare on the Yoamacoës does not appear.

† Smith has laid down on his map the seat of the *Atquanachuks*, as being nearly in a north-eastern direction from the head of the Chesapeake, on what he has above called, and described on his map—“the ocean sea;” but which, from our present knowledge, was certainly the present Delaware river or bay. The *Atquanachuks* must have been, therefore, some nation or tribe of Indians, who inhabited the country on the Delaware, some where about the present towns of Wilmington or Newcastle. It is possible, that they might be the same as those, or a tribe of them, mentioned by Mr. Charles Thompson, in his annotations on Jefferson’s Notes, under the denomination of Lenopi, called by Heckewelder Lenni-Lenape, by the French Loups, and by Penn’s early settlers—the Delawares. A little below the *Atquanachuks*, on the same “ocean sea,” as he erroneously supposed, Smith has laid down on his map the seat of the *Macocks*, separated from the *Atquanachuks* by a peninsula. A little lower again, on the same “ocean sea,” but nearly due east from the head of the Chesapeake, he has placed the *Chickahokin*; who appear to have been the same Indians as those mentioned by Mr. Thompson, in his annotations just cited, under the denomination of the *Chichohocki*, a tribe, as he says, of the Lenopi, and “who dwelt on the west side of the river now called Delaware, but which by the Indians was called Chihohocki.”—They must, therefore, have inhabited that part of the present Delaware State, on the Delaware river, lying between the Apokinimy and Red Lyon creeks.

‡ It will readily be observed by an inspection of Smith’s map, that this “mountaine called Peregrine’s mount,” was supposed by him to have been at the head of the *third* branch, (or the *third* one of the “four heads,”) of the Chesapeake eastward from the Susquehanah. The next to the Susquehanah was, as herein before stated, the present *North East* river, called by Smith in his map—“Gunter’s Harbour.” The next to that (the third head) appears to have been the *Elk* river, at the head of which he has placed this mountain—called by him Peregrine’s Mount; and which is, most probably, that since celebrated mount—called Gray’s Hill, where Sir William Howe, in the revolutionary war, in 1777, made his first lodgment, after debarking his army at the head of the Elk river.

vp, *Willowbyes* river,* in honor of the towne our captaine was borne in, and that honorable house the Lord Willowby, his most honored goodfriend.† The *Susquesahanocks* river we called *Smith's* falles ;‡ the next poynt to *Tockwhogh*, *Pising's* poynt ;§ the next poynt *Bourne*.|| *Powell's* Isles and *Smal's* poynt is by the river *Bolus* ;¶ and the little bay at the head—*Profit's* poole ;** *Watkins*, *Reads*, and *Mumford's* poynts are on each side Limbo ;††

SEC. VII.

1608.

* This river, as before stated, can be no other than *Bush* river, on the western shore of the Chesapeake, as is evident from an inspection of Smith's map.

† Smith was a native of the town of Willoughby, in Lincolnshire, and, when a very young man, travelled to France with Peregrine Bertie, the second son of Peregrine Bertie, Lord Willoughby, of Lincolnshire, in the capacity of servant. In testimony of his gratitude to the family, he therefore gave the above names to the mount and river.

‡ A place in the Susquehanah river, about five miles from its mouth, is still denominated—*Smith's* Falls, in the latest (Griffith's) map of Maryland.

§ In his map it is called—"Poynt Pesinge," (probably after *Edward Pising* or *Pesing*, one of the "souldiers" of his party, and possibly the first discoverer thereof,) and is denoted thereon as the next promontory on the eastern shore of the Chesapeake, below the mouth of the Tockwogh. Supposing the Tockwogh to have been the same as the *Sassafras*, "Poynt Pesinge" must have been one of the two head-lands between the mouth of that river and Worton creek in Kent county.

|| "Poynt Bourne" is evidently the same as that now called *Swan* point, in Kent county, directly opposite to the *Bolus* or Patapsco river.

¶ *Powell's* Isles, probably so called from Nathaniel Powell, one of the "gentlemen" of the party, are evidently the three islands on the western shore of the bay, one of which is now called *Pool's* island, (possibly a corruption of the name—*Powell*,) all of them delineated on Smith's map very exactly agreeable to modern maps, the former one, (*Pool's* island,) just below the *Bush* river, and the two others at the mouth of what is now called the Gunpowder river, immediately below the mouth of which is *Small's* point, probably the promontory formed by what are now called the Middle and Back rivers.

** This little bay, called by them—*Profit's* poole, (probably after *Jonas Profit*, one of the "souldiers" of the party,) appears to have been that, now obviously perceptible on the latest maps, formed by the two small islands last mentioned, near the main land, and the southern promontory or cape of what is called Middle river. The river, now called Gunpowder, was evidently passed by and unknown to Smith, though he seems to have intimated on his map, that he supposed there was a river there.

†† Smith's exploration of the Chesapeake appears to have been very imperfect, though very exact so far as his examination of the bay and its shores extended. In this account of his voyage, the whole of the Eastern Shore of Maryland, from *Swan*-point in Kent county to the lower part of Dorchester county near to Limbo, is skipt over by him without notice. His delineation, on his map, of three large islands, called by him—*Winstone's* Isles, represented by him as being nearly of equal size, and stretching along the Eastern Shore from *Swan* point to an indentation of the shore, which we may suppose he intended for the Chop-tank river, demonstrates, that in both his excursions up the bay, he kept close to the Western shore, without minutely examining any part of the Eastern below the Tockwogh. Hence the Isle of Kent must have been entirely unknown

SEC. VII. Ward, Cantrell, and Sicklemore, betwixt *Patawomek* and *Pamaun-
1608. kee*,* after the names of the discoverers. In all those places and the
furthest we came vp the rivers, we cut in trees so many crosses
as we would, and in many places made holes in trees, wherein
we writ notes, and in some places crosses of brasse, to signifie
to any, Englishmen had been there.

“Thus having sought all the inlets and rivers worth noting,
we returned to discover the river of *Pawtuxunt*, these people we
found very tractable, and more civill than any, we promised them,
as also the Patawomeks, to revenge them of the *Massawomeks*,
but our purposes were crossed.”†

Here ends all that is said in Chap. VI. of Smith’s History, as
to “what happened the second voyage in discovering the bay,”
that has immediate relation to Maryland. The narrative of this
“second voyage” up the bay is subscribed in like manner of that
of the former one, thus—“Written by *Anthony Bagnall*,” (who
appears to have acted as surgeon on the occasion, as Dr. *Russell*
had done before,) “*Nathaniel Powell*, and *Anas Todkill*.”

Prior to the preceding narratives of Smith’s two voyages up
the Chesapeake, he has inserted in the “Second Booke” of his
General History of Virginia, a kind of prefatory and sum-
mary account and description of the country called Virginia; in
which he has confined himself, for the most part, to that part of
the country contiguous to and bordering on the Chesapeake bay,
comprehending both Virginia and Maryland; and in which are
many remarks as illustrative of the first discoveries in the latter

to him, or considered by him as main land. The Chester, the Wye, the St.
Michael’s, and the Choptank rivers must also have been unobserved by him;
though, by two slight delineations on his map, he has intimated, that he sup-
posed there were rivers, both where the Chester and the Choptank are now
known to be, and on the former has placed the seat, or king’s residence, of a
tribe of Indians denominated the *Ozinies*. The country from the Chester south-
ward to the Choptank he has called—*Brooke’s Forest*. By “*Momford’s point*,”
he must have meant either Hooper’s or Barren islands, contiguous to Dorchester
county, both unascertained by him; next below which, and just above the *Cus-
carawaoock* or Nanticoke, he has laid down a river, called by him *Rapahanock*,
but which is most probably that now called Hungary or Hunger river. Watkins’s
point must have been the most southern promontory of Somerset county on the
bay, and what may be termed the exterior cape of Pocomoke bay. *Read’s point*,
still further eastward on the same bay, seems to be the northern cape or head-
land at the entrance of Pocomoke river, called by Smith the *Wighco*.

* In *Virginia*.

† Smith has been somewhat more explicit in relation to the river Patuxent and
its inhabitants, in his chapter containing his summary account of Virginia,
an extract from which the reader will presently find herein inserted, to which
will be added more particular comments than the above passage requires.

as in the former province. So much of it as relates to Mary-
land is, as follows:—

SEC. VII.
1608.

“By these former relations* you may see what inconveniences still crossed those good intents, and how great a matter it was all this time to finde but a harbour, although there be so many. But this *Virginia* is a country in *America* between the degrees of 34 and 45 of the north latitude. The bounds thereof on the east side are the great ocean: on the south lyeth *Florida*: on the north *nova Francia*: as for the west thereof, the limits are unknowne. Of all this country we purpose not to speake; but onely of that part which was planted by the *English men* in the yeare of our Lord, 1606. And this is under the degrees 37, 38, and 39. The temperature of this country doth agree well with *English* constitutions, being once seasoned to the country.† Which appeared by this, that though by many occasions our people fell sicke; yet did they recover by very small meanes, and continued in health, though there were other great causes, not onely to have made them sicke, but even to end their dayes.

“The sommer is hot as in *Spaine*; the winter cold as in *France* or *England*. The heat of sommer is in June, July, and August, but commonly the coole breezas asswage the vehemency of the heat. The chiefe of winter is halfe December, January, and halfe March. The cold is extreame sharpe, but here the proverbe is true, that *no extreame long continueth*.‡

* These “relations” were the accounts, inserted in what he called his “First Booke of the General History,” of the different voyages made to North America, prior to the first settlement in Virginia in the year 1606; as of those of Columbus, Cabot, Sir Humphrey Gilbert, Amidas and Barlow, Sir Richard Grenville, Pring, and Weymouth; which have been heretofore touched upon in our introductory volume already published.

† Mr. Henley, in one of his annotations on Shakspeare’s “All’s well that ends well,” commenting on the word “seasoning,” says, “the word is still used in the same sense in *Virginia*, to which government, and especially on the Eastern Shore of it, where the descendants of the first settlers have been less mixed with later emigrants, many expressions of Shakspeare’s time are still current. The word “seasoning” is still well known in Maryland, as well as in *Virginia*, in the sense above used by Smith, as also by him in another passage before stated. Shakspeare and Smith were nearly cotemporaries.

‡ The observations of *Smith* on the climate and weather, peculiar to *Virginia* and Maryland, which are nearly the same, are very just and correct; as experience teaches us at this day. They suggest reflections upon two very interesting subjects in the science of meteorology, when considered in relation to the United States, and more particularly to *Virginia* and Maryland. First, why the *medium* temperature of our winters is below, and of our summers above, that of the corresponding latitudes in Europe? And secondly, whether any perceptible alteration of the climate of these states has taken place, since the first set-

SEC. VII. "In the year 1607 was an extraordinary frost in most of Eu-

1608.

tlement of them by Europeans, and if so, what is the cause or causes of that effect? A full discussion of these questions here would far exceed the limits of a note. A remark or two only can be added. It has been assumed as an acknowledged fact, that the *medium* temperature of our winters is 28° below, and that of our summers 8° above (in Farenheit's scale) that of the corresponding latitudes in Europe. The most obvious cause of this occurring immediately to the mind, would be the ancient and superior cultivation of the country in Europe in comparison with that of North America. The immense forests, which clothed the country of these Atlantic States, when Europeans first settled here, by preventing the rays of the sun from warming and drying the soil, must have constituted a considerable variance in the temperature of the atmosphere adjacent to the surface of the earth, from what it was in the same latitude in Europe. The gradual clearing away of these forests then, and the admission of the warm rays of the sun to the soil, must in the eye of reason, have created an alteration, if not an amelioration, of the climate. This opinion, so rational in its appearance, seems to have been of long standing in America; but some facts occur which seem to shake the basis of this theory. Among some "Remarks concerning the gradual alteration of the temperature of the air in *America* and in *Ireland*," by an anonymous writer, (who appears to have been then a resident of *Ireland*,) in or about the year 1676, and published in the *Philosophical Transactions*, (*Lowthorp's* Abridgment, vol. ii. p. 42,) I find the following:—"That in *America* (at least as far as the English plantations are extended) there is an extraordinary alteration, as to temperature, since the *Europeans* began to plant there first, is the joint assertion of them all. The change of temperature is, and not without some reason, generally attributed to the cutting down of vast woods, together with the clearing and cultivation of the country. But that *Ireland* should also considerably alter, without any such manifest cause, doth very much invalidate that reason." This idea of an alteration, if not an amelioration, of the climate of *Virginia* and *Maryland*, seems to have continued with the progress of their growth. In "An account of *Maryland*, by Mr. *Hugh Jones*," an inhabitant of the Western Shore of *Maryland*, written in or about the year 1699, and published in the *Philosophical Transactions*, (*Lowthorp's* Abridgment, vol. iii. p. 600,) the supposition is again mentioned. "The air is now more wholesome than formerly, which I suppose proceeds from the opening of the country, that giving the air a freer motion: our summers are not extreme hot, as in the first seating; but our winters are generally severe, towards what they are in *England*. The north west wind is very sharp in winter, and even in the heat of summer it mightily cools the air; and too often at that time a sudden north-western strikes our labourers into a fever, when they are not careful to provide for it, and put on their garments while they are at work." A modern philosophic writer of *America*, (Mr. *Williamson*, in his "Observations on the climate of *America*,") has also adopted this opinion of both the alteration and amelioration of our climate, and accordingly affirms—"It is well known, that in the Atlantic States the cold of our winters is greatly moderated." But, notwithstanding the generality and currency of this opinion, rational as it appears to be, some stubborn facts rise up and militate against it. The opinion, that *Italy* has undergone a great improvement in the mildness of its climate from what it was in the time of the Romans, seems to have prevailed in Europe as generally as that of *America* here. But Mr. *Eustace*, in his late classical tour through *Italy*, has combated this idea with apparent success, contending that the climate remains the same as it was fifteen hundred years ago. That the greater degree of cold in the Atlantic States of *America* than what prevails in Europe, is principally owing to the

rope, and this frost was found as extreame in *Virginia*.* But the SEC. VII.

1608.

opening and clearing the forests of the country, seems to be further invalidated by a fact, I find stated both by Mr. Jefferson, in his Notes, and by Mr. Volney, in his "View of America;" which is, that at places in the new states west of the Allegany mountains and bordering on the Mississippi, there is a greater degree of warmth, amounting at least to three degrees of latitude in favour of these western states, compared with the places on the Atlantic coast of either Virginia or Maryland in corresponding latitudes. But these western states, particularly towards the valley of the Mississippi, must be near a century behind the States of Virginia and Maryland in the clearing of their forests and in the denudation of their soil, and in the consequent exposure of it to the rays of the sun. Mr. Pike, in his voyage up the Mississippi, in the year 1805, found on the eleventh of August, his thermometer as high as 108° , in the latitude of 39° , which is about or nearly in the parallel of Annapolis, in Maryland; a degree of heat never known, I believe, in Maryland. In the State of Illinois, where this heat occurred, although there are prairies of considerable extent, yet vast forests must still abound, to cool the air, if they act at all in that manner. Again, in the winter of 1780, the Chesapeake in Maryland was frozen over from its head as low down as the mouth of the Patowmac,—a circumstance never known before in Maryland, not only in the memory of the oldest men in the State then living, or handed down to them by tradition from the first settlement of the province in 1634. The coldness of the climate or winters of Maryland, we may therefore suppose, has not abated, although its forests are nearly extirpated. On the other hand, however, the diseases incident to the climate seem to have undergone a very perceptible alteration. Intermittent agues and fevers arising from the heat of summer and the first of autumn, or pleurisies from extreme cold in winter, are certainly not now so commonly known in the country as formerly; but to them have succeeded fevers of a typhous and malignant nature. This seems to indicate some great change in the climate.

* This is corroborated by the observations of other cotemporary writers. That there was "an extraordinary frost in most of Europe," in the winter of 1607, immediately preceding the summer of Smith's exploration of the Chesapeake in 1608, receives considerable proof from a pamphlet, entitled, "The Great Frost, Cold Doings, &c., in London, 1608." This pamphlet is cited by Mr. Steevens in his annotations on Shakspeare's play of King John, in illustration of the passage in king John's last dying speech in that play, when he supposed himself to have been poisoned.

"And none of you will bid the winter come,

"To thrust his icy fingers in my man."

A similar passage occurs in the pamphlet.—"The cold hand of winter is thrust into our bosoms." The words, "in London, 1608," appear to denote the date and place of the publication, to wit, "in London," in the spring of the year 1608, soon after the "Great Frost" of the preceding winter. Shakspeare and Smith, as herein before observed, were nearly cotemporaries. The former died in 1623; the latter in 1631; each above fifty years old. The commentators on the language of the former, therefore, throw much light on that of the latter.—Of the severity of this winter, of 1607–8, throughout North America, other authorities attest. In the life of Gorges by Belknap, it is noticed as being very severe in New England; and L'Escarbot, who was in Canada about this time, (in his *Hist. de la Nouv. France*,) remarks, that "the last winter of 1607–8, was the hardest that ever was seen. Many savages died through the rigour of the weather." It is stated also in Purchas's Pilgrimages, that "by the bitterness of that great frost, above half the Virginian colonists took their deaths," but, agreeably

SEC. VII. next yeare for 8 or 10 dayes of ill weather, other 14 dayes would
 1608. be as sommer.

“The windes here are variable, but the like thunder and lightning to purifie the ayre, I have seldome either seene or heard in *Europe*. From the south-west came the greatest gusts with thunder and heat.* The north-west winde is commonly coole and bringeth fair weather with it. From the North is the greatest cold, and from the east and south-east as from ths *Bermudas*, fogs and raines.

“Sometimes there are great droughts, other times much raine, yet great necessitie of neither, by reason we see not but that all the raritie of needful fruits in *Europe*, may be there in great plentie, by the industrie of men, as appeareth by those we there planted.

“There is but one entrance by sea into this country, and that is at the mouth of a very goodly bay, 18 or 20 myles broad. The cape on the south is called *Cape Henry*, in honour of our most noble prince. The land white hilly sands like unto the Downes, and all along the shores great plentie of pines and firres.

“The north *Cape* is called *Cape Charles*, in honour of the worthy Duke of York. The isles before it, *Smith's* isles, by the name of the discoverer. Within is a country that may have the prerogative over the most places knowne, for large and pleasant navigable rivers, heaven and earth never agreed better to frame

to what Smith has stated above, this severe frost was recompensed with as mild a winter with them the next year.”

* This does not seem to be exactly correspondent to the well known fact at this day in Maryland, and for these fifty years past; inasmuch as our “greatest gusts” most commonly come from the *north-west*, at least in the summer season. Theoretically speaking, however, Smith is herein somewhat correct. According to Volney's theory of our summer-gusts, (and he seems to have bestowed peculiar attention to our climate and winds, and herein appears to be highly plausible and ingenious,) they result from a meeting or counteraction of the south-west and north-west or north-east winds on the west side of the Allegany mountains. The south-west wind, in this case, is a kind of trade-wind, which, sweeping from the gulf of Mexico, traverses up the basins of the Mississippi and Ohio, loaded with warm and moist vapours. Meeting there with a north-west or north-east wind, it is there checked in its further progress; until these winds, by their joint or antagonist action against each other, accumulate their vapours so as to surmount their natural mound—the Allegany mountains; when, rushing over its summits, this combined fluid, according to the laws of gravity, descends, like a torrent, upon the valley of the Atlantic States. Our summer-gusts may, therefore, be said to come originally or in part from the south-west, as Smith states; but certainly not as he meant—perceptibly to the eye. Perhaps indeed about James-town, which is more towards the southern point of the Allegany ridge, and where he was most conversant in Virginia, they may rise more to the southward than in Maryland.

a place for man's habitation; were it fully manured and inhabited by industrious people. Here are mountaines, hills, plaines, valleyes, rivers, and brookes, all running most pleasantly into a faire bay, compassed but for the mouth, with fruitfull and delightsome land. In the bay and rivers are many isles both great and small, some woody, some plaine, most of them low and not inhabited. This bay lyeth north and south, in which the water floweth neare 200 myles, and hath a channell for 140 myles of depth betwixt 6 and 15 fadome, holding a breadth for the most part 10 or 14 myles. From the head of the bay to the north-west, the land is mountainous, and so in a manner from thence by a south-west line; so that the more southward the farther off from the bay are those mountaines.* From which fall certaine brookes which after come to five principall navigable rivers. These run from the north-west into the south-east, and so into the west side of the bay, where the fall of every river is within 20 or 15 myles one of the other.

“The mountaines are of divers natures: for at the head of the bay the rockes are of a composition like mill-stones. Some of marble, &c. And many peeces like christall we found, as throwne downe by water from those mountains. For in winter they are covered with much snow, and when it dissolveth the waters fall with such violence, that it causeth great inundations in some narrow valleys, which is scarce perceived being once in the rivers. These waters wash from the rocks such glistering tinctures, that the ground in some places seemeth as gilded, where both the rocks and the earth are so splendent to behold, *that better judgments than ours might have beene perswaded, they contained more than probabilities.* The vesture of the earth in most places doth manifestly proue the nature of the soyle to be lusty and very rich. The colour of the earth we found in diverse places, resembleth *bole armoniac, terra a sigillata, and lemnia*, fuller's earth, marle, and divers and other such appearances. But generally for the most part it is a blacke sandy mould, in some places a fat slimy clay, in other places a very barren gravell. But the best ground is knowne by the vesture it beareth, as by the greatnesse of trees, or abundance of weeds, &c.

* The course of the Allegany “mountaines” is, for the most part, nearly from the north-east to the south-west. The Chesapeake, as Smith has observed above, runs nearly north and south. Hence the “mountaines” appear to recede from the bay towards its mouth.

SEC. VII.

1608.

"The country is not mountenous, nor yet low, but such pleasant plains, hils, and fertile valleyes, one prettily crossing another, and watered so conveniently with fresh brookes and springs, no lesse commodious, than delightsome. By the rivers are many plaine marishes, containing some 20, some 100, some 200 acres, some more, some lesse.

"Other plaines there are few, but onley where the salvages inhabit, but all overgrowne with trees and weeds, being a plaine wilderness as God first made it."

Smith next herein proceeds to describe the rivers, and the particular tribes of Indians seated thereon, on the western shore of *Virginia*; but as his account thereof has no particular connexion with a history of *Maryland*, it is here omitted.

"The fourth river is called *Patawomeke*, 6 or 7 myles in breadth. *It is navigable 140 myles*,* and fed as the rest with many sweet rivers and springs, which fall from the bordering hils. These hils many of them are planted,† and yield no lesse plentie and varietie of fruit, then the river exceedeth with abundance of fish. It is inhabited on both sides. First on the south side at the very entrance is *Wighcocomoco*, and hath some 130 men, beyond them *Sakacawone* with 30. The *Anawmanient* with 100. And the *Patawomekes* more than 200.‡ Here doth the river divide itselfe into 3 or 4 convenient branches. The greatest of the least is called *Quiyough*,§ trending northwest, but the river itselfe turneth northeast, and is still a navigable streame. On the western side of this bought is *Tauxenent* with 40 men.|| On the north of this river is *Secowocomoco* with

* This nearly corresponds with the actual distance, measured with the windings of the channel of the river from the mouth thereof to the city of Washington, where the falls impede further navigation.

† Smith could mean here only, that they were planted; that is, settled or cultivated by the Indians; for no plantation of Europeans had been as yet seated on the Patowmack.

‡ The scites of these Indian towns have been before stated in the account of Smith's first tour up the Chesapeake.

§ Undoubtedly the *Acquia* creek, as herein before stated.

|| Mr. Jefferson has stated this Indian town, called Tauxenent, to have been in Fairfax county, Virginia, "about Gen. Washington's."—The word "bought," in the text above, though apparently obsolete, means the *bend* of the river opposite to Mount Vernon. It is explained in Johnson's Dictionary, as being synonymous to the words "twist" and "flexure," and is so used by Milton in his Allegro:

"In notes, with many a winding *bout*,
Of linked sweetness long drawn^out."

40.* Somewhat further *Potopaco* with 20.† In the east part is SEC. VII.
Pamacacack with 60.‡ After *Moyowance* with 100. And 1608.
 lastly, *Nacotchtanks* with 80.§ The river above this place
 maketh his passage downe a low pleasant valley overshadowed

* The distance of Secowocomoco or Cecomocomoco, from the mouth of the river Patowomeke, as laid down by Smith, on his map, is about ten leagues. Accounting three miles to the league, this will nearly correspond with the distance of the mouth of the *Wicomoco* river from that of the Patowmack; which *Wicomoco* river divides St. Mary's and Charles counties, in Maryland, from each other, on the north side of the Patowmack. This Indian town called Secowocomoco, in the text, but Cecomocomoco on Smith's map, was most probably, therefore, situated on the same *Wicomoco* river last mentioned.

† As this place, *Potopaco*, is stated to have been "somewhat further" up the Patowmack, on the north side thereof, then Secowocomoco, or Wicomoco, it would appear to have been the same as that now called Port Tobacco. Smith's location of it on his map, is in conformity to this supposition. Our early English colonists of that part of Maryland, who were tobacco-planters, would very naturally and aptly convert the Indian name, Potopaco, although it probably had originally a different meaning, into Port-Tobacco,—a haven convenient to them for the exportation of that produce, and therefore an appellation more appropriate as well as more familiar to them. Smith has laid down on his map two or three other Indian towns, or "ordinary howses," as he calls them, next in succession above Potopaco and on the same (Maryland) side of the river, which he has not mentioned in the text above. Immediately above Potopaco he has laid down on his map two of these towns, or "ordinary howses," to which he has not affixed any name; but, a little above these, a third one he calls *Nushemouck*. There is no name in Griffith's map of Maryland, which corresponds in sound with this, at least in that part of Charles county, but from its location on Smith's map, it would appear to have been somewhere about Nanjemy river. Three other towns, or "ordinary howses," Smith has located on the Maryland side of the river; one just above *Nushemouck*, and two others in the great bend directly opposite to the town of the Patowomekes and the mouth of the Quiyough or Acquia creek, but without affixing to them any names. Next above these, and about four or five miles above the Acquia, was *Nussamek*, on the Maryland side, denoted as a "king's howse." Next above *Nussamek*, and on the Maryland side, was *Mataughquamend*, which evidently seems to be the same as the creek now called *Matawoman*. The distance on Smith's map from the mouth of the Quiyough to the town and creek of *Mataughquamend* corresponds very nearly with the distance on Griffith's map of Maryland from the mouth of the Acquia to the mouth of the Matawoman creek or run in Charles county, about eight miles.

‡ There appear on Smith's map two places on the Patowmack denominated *Pamacacack*; one on the Virginia side of that river, opposite to *Nassamek*, just before mentioned; and another on the Maryland side just above *Mataughquamend*. From the expression in the text above,—"*In the east part, &c.*" the place thereby meant must have been a place of that name just above the *Mataughquamend* or *Matawoman* creek, in what is now called Maryland.

§ The *Moyowance* above mentioned, appear to be the same as the *Moyaones* before mentioned by Smith, in the account of his first tour up the Chesapeake; where also the scite of the *Nacotchtanks* is stated.

SEC. VII. in many places with high rocky mountaines; from whence dis-
 1608. till innumerable sweet and pleasant springs.*

"The fift river is called *Pawtuxunt*, of a lesse proportion than the rest; but the channell is sixteen fadome deepe in some places. Here are infinit skuls of divers kindes of fish more than elsewhere. Upon this river dwell the people called *Acquintanacksuah*, *Pawtuxunt* and *Mattapanient*. Two hundred men was the greatest strength that could be perceived. But they inhabit together, and not so dispersed as the rest. These of all other we found most civill to give intertainment.†

* This part of Smith's description of the Patowmack seems to afford some proof, that he sailed up that river as high as it was navigable for his vessel—to where the city of Washington, or rather Georgetown, now stands; and here terminated the extent of his exploration of that noble river. As there are a few places, however, on the Maryland side of that river, from the "falles" thereof to its mouth, which he has not mentioned in the text of his History, although he has denoted them on his map, a few supplementary remarks thereon may not be altogether improper. About mid-way between the Moyaones and the Nacotch-tanks, on the Maryland side of the Patowmack, he has laid down a small creek, emptying into the Patowmack, and has denoted thereon two or three small towns, or "ordinary howses," to which creek he has affixed the name of *Tessamatuck*. From a comparison with a modern map, this place seems to have been somewhere about Oxen-creek, in Prince George's county. A few miles below the Moyaones, on the Maryland side, he has denoted also a small creek and town, to which he has affixed the name of *Cinquactack*, and which seems to correspond with that now called Piscataway. Considerably lower down the river also, and on the Maryland side, he has laid down on his map, but not mentioned in his book, a small town which he calls *Monanauk*, about eighteen or twenty miles from the mouth of the river. This place appears to correspond in the distance from the mouth of the river, as just mentioned, with that of Britton's bay or Clement's branch, in St. Mary's county. To which may be here added, in conclusion of his description of the Patowmack, that the north point or cape at the mouth of that river, now called Point-Look-out, is denoted by him as "Sparke's poynt."

† The *Acquintanacksuah* town, or "king's howse," called by Smith on his map *Acquintanacksuck*, is there denoted by him, as situated on the right bank or south side of the Patuxent, about twelve miles from the mouth of that river. A small creek, about two miles and a half above a place called *Cole's* Inspection-house, in St. Mary's county, seems to correspond with Smith's location of this tribe. The town of the Pawtuxunts, (the most considerable one upon this river, as we may suppose, from its having either received its name or given it to the river,) denoted also by Smith as a "king's howse," appears, from his location of it, to have been on the north side or left bank of the river, in Calvert county, and nearly opposite to *Acquintanacksuck*. No town or place of the name of *Mattapanient* is laid down by Smith on his map; so that the exact scite or situation of it cannot be ascertained by us. It is certain, however, that one of the *hundreds*, or civil divisions of St. Mary's county, was, soon after its settlement by Lord Baltimore's colony, denominated *Mattapanient* hundred; as will hereinafter appear. It would seem also, that this hundred lay in that part of the coun-

“Thirtie leagues northward is a river not inhabited, yet navigable: for the red clay resembling *bole armoniack* we called it *bolus*. At the end of the bay where it is 6 or 7 myles in breadth, it divides itselfe into 4 branches, the best commeth north-west from among the mountaines, but though canows may goe a dayes journey or two up it, we could not get two myles up it with our boat for rockes. Upon it is seated the *Sasquesahanocks*, neare it north and by west runneth a creeke a myle and a halfe: at the head whereof the Eble left us on shore, where we found many trees cut with hatchets. The next tyde keeping the shore to seeke for some salvages; (for within thirtie leagues sayling, we saw not any, being a barren country,) we went up another small river like a creeke, 6 or 7 myle. From thence returning we met 7 canowes of the *Massawomeks*, with whom we had conference by signes, for we understood one another scarce a word: the next day we discovered the small river and people of *Tockwhogh* trending eastward.*

SEC. VII.
1608.

ty which bordered on the Patuxent, and towards the mouth thereof. Supposing, therefore, that this hundred took its name from the above mentioned ancient Indian town, the scite of this town was most probably in some part of this hundred and situated somewhere on the Patuxent between its mouth and *Cole's* Inspection-house. The circumstance above mentioned by Smith, that “they inhabit together, and not so dispersed as the rest,” seems to indicate, that the *Mattapanient* town was situated also not far from the other two; probably near the *Acquintanacksucks*, being on the same side of the Patuxent. These three places, being the residences of the Werowances, or kings, on the Patuxent, are all that Smith has thought proper to describe in his General History. He has, however, laid down on his map a considerable number of little towns, or “ordinary howses,” as he there calls them, seated on the shores of the Patuxent. But, as we have no accounts of any thing relating to them, the bare mention of their names, in the order in which they are seated on both sides of that river, seems to be sufficient. Immediately above the *Acquintanacksucks*, and on the same side of the river, is *Wasmacus*, then *Acquaseack*, (which last possibly is a place now called *Acquases*, in Prince George's county,) *Wasapekent*, *Macocanaco*, *Pocatamough*, *Quotough*, *Wosamens* and *Matpanient*, which last is denoted as the highest seated up the river on the south and west side thereof, and seems to correspond with the creek now called *Mattapany*. Nearly opposite to *Matpanient*, and on the north or east side of the Patuxent, near the little town called *Cuacataugh*, then next below was *Wepanawomen*, then next in order, still descending the river, were *Tanskus*, *Waseacup*, and *Onnatuck*, which last was just above the great town of the *Pawtuxunts*, above mentioned. Next below *Pawtuxunt* was *Quemocac*, and lastly, *Opament*, which seems to have been about eight or nine miles from the mouth of the river. Further mention of some Indian towns on the Patuxent will be made, when we come to state the excursion or visit made to the Patuxent by John Pory, secretary of Virginia, in the year 1621.

* What is contained in the preceding paragraph, has been commented on before, where Smith's second tour up the Chesapeake is stated.

SEC. VII. "Having lost our grapnell among the rocks of *Sasquesahanocks*,
1608. we were then neare 200 myles from home, and our barge about two tuns, and had in it but twelve men to performe this discovery, wherein we lay about 12 weekes upon those great waters in those unknowne countries, having nothing but a little meale, oatmeale and water to feed us, and scarce halfe sufficient of that for halfe that time, but what provision we got among the salvages, and such rootes and fish as we caught by accident, and God's direction; nor had we a mariner nor any had skill to trim the sayles but two saylers and myselfe, the rest being gentlemen, or them were as ignorant in such toyle and labour. Yet necessitie in a short time by good words and examples made them doe that that caused them ever after to feare no colours. What I did with this small meanes I leave to the reader to judge, and the mappe I made of the country, which is but a small matter in regard of the magnitude thereof. But to proceed, 60 of these *Sasquesahanocks* came to us with skins, bowes, arrows, targets, beads, swords, and tobacco pipes for presents. Such great and well-proportioned men are seldom seene, for they seemed like giants to the English, yea and to the neighbours, yet seemed of an honest and simple disposition, with much adoe restrained from adoring us as Gods. These are the strangest people of all these countries, both in language and attire; for their language it may well become their proportions, sounding from them, as a voyce in a vault. Their attire is the skinnnes of beares, and wolves, some have cossacks made of beares heads and skinnnes, that a mans head goes through the skinnnes neck, and the eares of the beare fastened to his shoulders, the nose and teeth hanging downe his breast, another beares face split behind him, and at the end of the nose hung a pawe, the halfe sleeves comming to the elbowes were the neckes of beares, and the armes through the mouth with pawes hanging at their noses. One had the head of a wolfe hanging in a chaine for a jewell, his tobacco-pipe three quarters of a yard long, prettily carved with a bird, a deare, or some such devise at the great end, sufficient to beat out ones braines: with bowes, arrowes, and clubs, sutable to their greatnesse. These are scarce knowne to *Powhatan*. They can make neare 600 able men, and are pallsadoed in their townes to defend them from the *Massawomekes* their mortall enemies. Five of their chiefe *Werowances* came aboard vs and crossed the *bay* in their barge. The picture of the greatest of them is sig-

nified in the mappe. The calfe of whose leg was three quarters of a yard about, and all the rest of his limbes so answerable to that proportion that he seemed the goodliest man we ever beheld. His hayre, the one side was long, the other shore close with a ridge over his crowne like a cocks combe. His arrowes were five quarters long, headed with the splinters of a white christall-like stone, in forme of a heart, an inch broad, and an inch and a halfe or more long. These he wore in a woolues skinne at his backe for his quiver, his bow in the one hand and his clubbe in the other, as is described.

“On the east side of the bay is the river *Tockwhogh*,* and upon it a people that can make 100 men, seated some seaven myles within the river: where they have a fort very well pallisadoed and mantelled† with barks of trees. Next them is *Ozinies* with sixty men.‡ More to the south of that east side of the

SEC. VII.

1608.

* That this is the same river as that now called the *Sassafras*, we have endeavoured herein before to shew, in our comments on Smith's second voyage up the Chesapeake.

† This is the obsolete mode of spelling the word *mantled*; which, according to Johnson in his dictionary, sometimes signifies covered or cloked: for which he cites Shakspeare.

‡ The author of the anonymous History of Maryland, before mentioned, states—that “the *Osinies* probably dwelt on the modern *Sassafras* river.” As he appears to have been erroneous in his location of the *Tockwhoghs*, so is he also in that of the *Osinies*.—If we have succeeded herein before in our endeavours to shew, that the *Tockwhogh* river of Smith was “the modern *Sassafras* river,” it will necessarily follow, according to Smith's map, that the *Ozinies* must have been seated on the next river below the *Tockwhogh*. But Smith has laid down no river on the Eastern Shore below the *Tockwhogh* and above the three isles, called by him *Winstone's Isles*, evidently thereby the *Isle of Kent*, &c. He has, however, made on his map a small indentation, indicating his supposition of a river there just above these isles, and directly opposite to the mouth of his *Bolus* river,—the *Patapsco*; and on this indentation in his map he has denoted the scite of the *Ozinies* by his mark of “king's howses,” and the name of the *Ozinies* annexed thereto. This location of the *Ozinies*, by Smith, on an opening to the bay on the Eastern Shore, which opening he supposed to be a river, but not fully delineated by him as such on his map, inasmuch as he had not explored it, being directly opposite to the *Patapsco* river, and above the *Isle of Kent*, demonstrates, that this indentation or opening on the Eastern Shore was intended for the river now called the *Chester*, the mouth of which could not have been passed unobserved by Smith in his ascending and descending the bay; and that the *Ozinies* lived on it he probably had from the *Tockwhoghs* or some other Indians.—That an *Indian* settlement, of some considerable size, was formerly situated on the *Chester* river, is evident from some very remarkable remains still visible on a peninsula in *Queen Ann's county* formed by the *Corsica* creek and the *Chester* river. The gentlemen, to whom I believe this peninsula belongs, has informed me by letter, that “within the area of this peninsula there are two hundred acres of land covered deep with oyster-shells, among which have often

SEC. VII. bay, the river *Rapahanock*,* neere vnto which is the river *Cuscarawaock*. Upon which is seated a people with 200 men. After that, is the river *Tanto Wighcomoco*, and on it a people with 100 men.† The people of these rivers are of little stature, of another language from the rest and very rude. But they on the river *Acohanock* with 40 men, and they of *Accomack* 80 men doth equalize any of the territories of *Powhatan*, and speake his language, who over all these doth rule as king.

1608.

been found Indian weapons, buck-horn, and the bones of the human skeleton. It is perfectly evident," he adds, "that a great body of Indians must have been employed a great while to collect all those shells."—This raises a strong supposition, that the seat of the Ozinies must have been on this spot, which is on the south side of the Chester, and about fifteen or sixteen miles from its mouth. The "sixty men," belonging to them, mentioned by Smith, must have meant that number of warriors; so that, upon the principle before stated, from Mr. Jefferson, of three warriors to ten souls, their tribe, comprising men, women, and children, would have amounted to only two hundred; but, by the more modern rule, (as stated by the superintendant of the Indian trade, in 1820,) of one warrior to ten souls, their tribe would have amounted to about six hundred.

* It will be recollected, that Smith has herein before stated, that the remarkable river in Virginia, now invariably known by the name of the *Rapahanock*, was "by many called *Tappahanock*;" which last name he has annexed to it on his map. But he has also laid down on his map, on the Eastern Shore of the bay, another river denoted by him under the denomination of the *Rapahanock*, (to which he alludes in the text immediately above,) and has placed it next above the river called by him—the *Cuscarawaock*, (which last river we have supposed to have been the *Nanticoke*,) and also above the isles, to which he affixed the name of *Limbo*. From a comparison of this part of his map with modern maps of Maryland, it will be seen, that this river on the Eastern Shore, which he called the *Rapahanock*, could be no other than the river in Dorchester county called on Griffith's map *Hungary* river, but more commonly by the neighbouring inhabitants—*Hunger* river. This name—*Rapahanock*, he probably had from some of the Eastern Shore Indians during his first voyage up the Chesapeake.

† The above passage confirms our former arrangement of the rivers on the lower part of the Eastern Shore, as herein before stated. Supposing the *Rapahanock*, just above mentioned by Smith, to have been the *Hunger* river in Dorchester county, as we have just ventured to state; "neere unto which is the river *Cuscarawaock*;" it seems necessarily to follow, that he must have meant by the *Cuscarawaock*—the *Nanticoke* river, that being the next and nearest river to the *Hunger*, "after that," as he says, "is the river *Tanto Wighcomoco*;"—which may be understood in two different ways; to mean, either the *Wighcomoco* now so called, which is the next river southwardly to the *Nanticoke*, and, by prefixing the word—*Tanto* to it, to distinguish it from the *Wighco*, by which he meant the *Pocomoke*, or the *Wighco* itself laid down by him on his map, evidently the *Pocomoke*, omitting, under this last supposition, the river now known as the *Wighcomoco*, as also that called the *Manokin*, neither of which last, as it appears from his account, he explored in any manner.—How the author of the anonymous History of Maryland before cited could suppose, that the *Cuscarawaock* was "probably that now called the *Chester*," after perusing the above passage in

“Southward we went to some parts of *Chowanock* and the *Mangoags* to search for them left by Mr. *White*.* Amongst those

SEC. VII.

1608.

Smith's History, seems extraordinary, and in which he is certainly erroneous. A remark herein before made, may be again repeated, as it appears to be of considerable importance. The term *Wighco*, or *Wighcomoco*, seems to have been a favorite term with the Indians in the denomination of rivers. There are two rivers in Northumberland County, Virginia, near Smith's point at the mouth of the Patowmack, called *Wighcomoco*. There is also a *Wighcomoco* river on the Maryland side of the Patowmack, dividing the counties of St. Mary's and Charles from each other. It appears, therefore, to have had some etymological meaning not now known.

* It will be recollected, as it has been herein before stated, that in the year 1587, a colony, consisting of more than one hundred adventurers, was settled on the island Roanoke, in North Carolina, under a Captain *John White*, as Governor. White returned to England in the same year, in order to procure further supplies for the colonists; but the Spanish war preventing any supplies from being sent to them for a year or two after they had been settled there, and nothing concerning them any way satisfactory having been ever afterwards known, they were supposed to have been destroyed by the Indians. Sentiments of humanity, however, continuing to prompt many of the members of the Virginia Company in England concerning these unfortunate settlers, instructions were given to Captain Newport, on his second voyage to Virginia, with the second supply of colonists and stores, (who arrived there just about the time of Smith's return from his exploration of the Chesapeake in 1608,) that endeavors should be made to find some of the lost company sent to Roanoke, under a supposition, that some of them might still be alive as captives with the Indians. No efforts, however, appear to have been made by Newport, during his stay in the country after bringing the second supply, which was during the remainder of the year 1608, to find any of the lost company of Governor *White*. But, after Newport's departure for England, Captain Smith set out on a voyage to *Pamunkee*, (now called *York* river,) on the 29th of December, 1608, and stopped by the way at *Warraskoyack*, (now called *Warrasqueake*,) where the Isle of Wight county borders on the James river. Here he prevailed upon the king of the *Warraskoyacks* to furnish him with two guides to accompany “Mr. *Sicklemore*, a very valiant, honest, and painefull souldier,” as Smith terms him, (probably the same *Michell Sicklemore*, who had attended him in his two voyages up the Chesapeake,) on a visit to the *Chowanocks*, who lived on the *Chowan* river near the divisional line between North Carolina and Virginia, under a pretence, as Smith says, to carry a present to their king, but in reality “to seeke for the lost company of Sir Walter Raleigh's,” (under *White*) “and silke grasse.”—The king complied, and Sicklemore departed with his guides. How long Sicklemore was gone on that excursion, is not mentioned; but Smith subsequently states:—“Master Sicklemore well returned from *Chowanoke*; but found little hope and lesse certaintie of them were left by Sir *Walter Raleigh* ;”—meaning the unfortunate people under *White*. He immediately afterwards in the next paragraph states, as follows:—“Master *Nathaniel Powell* and *Anas Todkill*,” (who had, both of them, accompanied him in his previous excursions up the Bay,) “were also by the *Quiyoughcohanocks*,” (who appear to have lived somewhere about Upper *Chipoack* creek, which divides the counties of Surry and Prince Georges, in Virginia, from each other,) “conducted to the *Mangoags*,” (who lived on the *Nottoway* river, which empties into the *Chowan* in North Carolina,) “to search them there: but nothing could they learne but they were all dead.”—This excursion of Powell and Todkill was most probably in the spring of 1609, and their

SEC. VII. people are thus many "severall nations of sundry languages,
 1608. that environ Powhatan's Territories. The *Chowanocks*, the *Mangoags*, the *Monacans*, the *Mannahokes*, the *Masawomekes*, the *Powhatans*, the *Sasquesahanocks*, the *Atquanachukes*, the *Tockwoghes*, and the *Kuvearawaocks*. All these not any one understandeth another but by interpreters."

1620. In further illustration of what may be termed the primeval state of the country now denominated Maryland, may be here added some particulars relative to what is called the "travels" of John Pory, in the year 1620.—Mr. John Pory, "gentlemen," is mentioned, as one of the patentees in the second charter of Virginia, bearing date, May 23d, 1609. He next appears, as one of Sir George Yeardley's council, who arrived in Virginia, as governor of that colony, on the 18th of April, 1619. It is probable, that Pory had been, before that time, a resident in Virginia, in the time of governor Argall; as he is stated to have been closely connected with that governor in his arbitrary and improper proceedings while governor of that colony. He was, however, on the arrival of governor Yeardley appointed a councillor, and held at the same time the office of secretary of the province. Whether this last office had been conferred on him by Argall or Yeardley, does not appear. He succeeded Mr. Rolfe as secretary; but was afterwards discharged from that place by the order of the company in England, for betraying their councils to the Earl of Warwick.* Among the improper proceedings of governor Argall; in which Pory appears as an active sub-agent, both of them under the patronage and encouragement of the Earl of Warwick, who had then formed a little party in the Virginia Company at home, was a scheme "to set up a new plantation in Virginia;" for which purpose they had procured a patent "to the said captain Argall and his associates; whereby he and his company, their heirs and assigns (save only in time of defence by war) were exempted from all power, authority, and jurisdiction, to be from hence" (that is, from the Virginia Company in England,) "devised, or there" (in Virginia) "established, that so he" (the captain) "might reign there as great and absolute master, without law or controlment and

intelligence seems to have quieted all subsequent inquiries concerning those unfortunate colonists. Although Smith's expression above is,—"*we went to Chowanock*," &c.; yet it certainly means only, that persons were sent by him to Chowanock to search, &c.; which appears to have been done under his presidency.

* Burk's Hist. Virg. Vol. 1, p. 273.

without the fear of ever being called to any future reckoning.”* SEC. VII.
 There can be no doubt, but that this scheme was in substance, 1620.
 to do what Lord Baltimore subsequently did, (about which Clay-
 bourne and some other Virginians made such a pothor,) that is,
 to lop off some of the unsettled territories of Virginia, and erect
 a new Province, and a new government distinct from that of
 Virginia. There is every ground of probability to suppose, that
with this view Pory performed his “travels” alluded to. It
 would seem, that he subsequently drew up an account of these
 travels, which was either delivered to or procured by Mr. Samuel
 Purchas, and published by him, in the year 1625, in his book
 entitled, *Hackluitus Posthumus*, or Purchas’s Pilgrims.” But,
 not being able to have recourse to this scarce volume in America,
 we are left to rest our narrative of Pory’s travels entirely
 upon the authority of Smith’s statement thereof in his General
 History of Virginia, which statement, from circumstances presently
 mentioned, may be depended upon as being the same, at least in
 substance, as that of Mr. Purchas. Prefatory, however, to this
 statement, it seems to be necessary to promise, as further
 mentioned by Smith in his general history,† that the Virginia
 Company in England, in the year 1619, sent instructions to their
 government in Virginia, that certain lands in different parts of the
 Province, with a certain number of *tenants* thereon, sent by the
 company from England for that purpose, should be appropriated
 to the use of the different officers of the government of the Province,
 as therein specified, in lieu of salaries; which plantations
 were to go to their *successors* in office: among others, to the governor
 and secretary, each one plantation or tract of land, as therein
 mentioned. In like manner, plantations for the special use and
 profit of the company in England were also to be thus settled and
 planted. Settlements of this kind were accordingly made and
 planted, in pursuance of these instructions on the eastern shore of
 Virginia; particularly, one for the use and profit of the company,
 one for the governor, and one for the use of the secretary of the
 Province *pro tempore*, who, in the year 1620, was Mr. John Pory.
 It was under the ostensible view of visiting the “secretary’s
 lands, on the Eastern Shore,” which lands appear to have been
 located at or near to the *Indian* town called *Accomack*, a town
 situated, not in what is now called *Accomack*

* See the company’s declaration, of May 7th, 1623, in *Burk’s Hist. Virg.* Vol. 1. p. 318.

† *Smith’s Hist. Virg.* Vol. ii. p. 40.

SEC. VII. county, but on or near to the little river called *Cheriton* in what 1620. is now called Northampton county, that Mr. Pory made his excursions, in the year 1620, into other parts of the country bordering on the Chesapeake. An account of which is inserted in Smith's History, as follows:—

“The observations of Master *John Pory*, Secretarie of *Virginia*, in his trauels.

“Hauing but ten men meanly prouided to plant the secreta-ries land on the eastern shore neere *Acomack*. Captaine *Wilcock's* plantation, the better to secure and assist each other.* Sir George Yearely intending to visit Smith's isles, fell so sicke that he could not, so that he sent me with *Estinien Moll*, a Frenchman, to finde a convenient place to make salt in. Not long after *Namenacus*, the king of *Pawtuxunt*,† came to vs to seeke for *Thomas Saluage*, our interpreter. Thus insinuating himselfe, he led vs into a thicket, where all sitting downe, he shewed vs his naked brest; asking if we saw any deformitie upon it, we told him, No; No more, said hee, is the inside, but as sincere and pure; therefore come freely to my countrie and welcome: which wee promised wee would within six weekes after. Hauing taken a muster of the companies tenants,‡ I went to Smith's isles, where was our salt-house: not farre off wee found a more convenient place, and so returned to *James* towne.

“Being furnished the second time,§ wee arrived at *Aquohanock*,|| and conferred with *Kiptopeke* their king. Passing *Russel's* ile and *Onancoke*, we arrived at *Pawtuxunt*: the description of those places you may reade in captaine *Smith's* discoueries, therefore needlesse to be writ againe.¶ But here arriving

* The sense of the two sentences above seems to be somewhat obscure; but by altering the punctuation of a full stop at the word *Accomack* into a comma, so as to make *Accomack* and captaine *Wilcock's* plantation one and the same place, near which the secretary's lands were, it seems to be rendered more intelligible: but the sentences would be still ungrammatical.

† The *Indian* town on the river *Patuxent* in Maryland, herein before mentioned.

‡ The “tenants” seated on the lands of the Virginia company in England, located on the eastern shore, as before explained.

§ These two excursions appear to have been both in the same year, 1620.

|| The *Indian* town, called *Aquohanock*, appears from Smith's map, compared with Madison's, to have been situated on a river or creek of the same name, which now in part divides the counties of *Accomack* and *Northampton* from each other.

¶ This expression seems to indicate, that the above account, entitled “The Observations of Master Pory,” &c. as printed in *Smith's* book, was only an

at *Attoughcomoco* the habitation of *Namenicus* and *Wamenato*, SEC. VII.
 his brother,* long wee staid not ere they came aboard vs with
 a brasse kettle, as bright without as within, ful of boyled oisters.
 Strict order was given none should offend vs, so that the next
 day I went with the two kings a hunting, to discover what I
 could on their confines. *Wamanato* brought mee first to his
 house, where hee shewed mee his wife and children, and many
 corne-fields; and being two miles within the woods a hunting,
 as the younger conducted me forth, so the elder brought me
 home, and vsed me as kindly as he could after their manner.
 The next day he presented me twelve beuer skinnes† and a canow,
 which I requited with such things to his content, that he pro-

1620.

abridgment or copy of some original account thereof, then before drawn up; most probably that account of *Pory's* travels, which was published in *Purchas's* *Pilgrims*. There appears to have been a great personal friendship between *Samuel Purchas*, the author of the "*Pilgrims*," and captain *Smith*, as is evident from some "*Commendatory Verses*," written by *Purchas*, and published in *Smith's* *History*, entitled, "*Samuel Purchas of his Friend Captaine John Smith and his Virginia*;" of which, indeed, the reader who peruses them, will much regret that the poetry was not better. *Purchas* published his "*Pilgrims*" in 1625, and *Smith* his *History of Virginia* in 1629. Hence it may be inferred, that the latter might have borrowed his account of *Pory's* travels from the former, although, without doubt, he had previously communicated to the former much general information concerning his own travels. The original account of *Pory's* travels probably contained a description of *Russel's* isles and *Onancock* and *Pawtuxunt*, which *Smith* thought "needlesse to be writ againe," in this part of his book, inasmuch as he had before described them in a former part of his work; but it does not appear that *Onancock* was ever before mentioned by him therein. It was probably the place now so called, which was lately or is now the capital town of *Accomack* county, where the county courts are held.

* There is no place of this or a similar denomination on the *Pawtuxunt* laid down by *Smith* on his map, nor have we any clew whereby even a probable location of this town may be made. As *Pory* and his party arrived first at the town called *Pawtuxunt*, it would seem that *Attoughcomoco* was higher up the river than that town, which, as we have before described it from *Smith's* map, appears to have been on the left or north side of the river *Patuxent*, in what is now *Calvert* county, and nearly opposite to a place called *Cole's* Inspection-house on the *St. Mary's* side of the river.

† This affords ample proof that those valuable animals called *beavers*, whose fur is so estimable, once existed in *Maryland* in considerable numbers, though no where therein now known. They must have abounded, at the time of *Pory's* travels, in the head waters of the *Patuxent*. Tradition has pointed out various similar places on the eastern shore also, where it is said they once existed. Our provincial records also recognise licenses to trade with the *Indians* of the province for *beaver*, as will hereinafter appear. *Smith* mentions them in his description of the animals of *Virginia*. "The beaver," says he, "is as big as an ordinary water-dog, but his legs exceeding short. His fore-feete like a dog's, his hinder feet like a swan's. His taile somewhat like the forme of a racket, bare without haire, which to eat the salvages esteeme a great delicate." Those of *Maryland*, we may suppose to have been of the same description.

SEC. VII. 1620. mised to keepe them whilst hee lived, and burie them with him being dead. Hee much wondered at our bible, but much more to heare it was the Law of our God, and the first chapter of *Genesis* expounded of *Adam* and *Eve* and simple marriage; to which he replied, hee was like *Adam* in one thing, for he neuer had but one wife at once: but he, as all the rest, seemed more willing of other discourses they better understood. The next day the two kings with their people, came aboard vs, but brought nothing according to promise; so that ensigne *Saluage* challenged *Namenicus* the breach of three promises, viz: not in giving him a boy, nor corne, though they had plentie, nor *Montapass* a fugitive, called *Robert Marcum*, that had lived five yeeres amongst those northerly nations,* which he cunningly answered by excuses. *Womanato*, it seems, was guiltlesse of this falsehood, because hee staid alone when the rest were gone. I asked him if he desired to be great and rich: he answered, they were things all men aspired vnto:† which I told him he should be, if he would follow my counsell, so he gaue me two tokens, which being returned by a messenger, should suffice to make him confident the messenger could not abuse vs.

“Some things being stolne from vs, he tooke such order that they were presently restored, then we interchanged presents: in all things he much admired our discretions, and gaue vs a guide that hee called brother, to conduct vs up the river: by the way we met with diuers that still tould vs of *Marcum*: and though it was in October, we found the countrie very hot, and the corne

* This *Robert Marcum* must have been one of the English settlers in Virginia, who had left them, possibly for some crime, or as a runaway servant, being a “fugitive,” and having become an inmate with the Indians on the Patuxent, who were “northerly nations” in respect to Virginia, had assumed an Indian name—*Montapass*.

† Philosophy from a savage!—Although our American Indians, when first discovered, appeared to approximate to what theoretical writers upon government call a pure *state of nature*, if such a state could exist, as nearly as any portion of mankind hitherto known, yet we here find among them a perfect idea of what is generally deemed the first stage of civilization—the utility and value of *property*. In *Womanato*’s estimation the acquisition of riches was one step to greatness, or that greatness and riches were correlative terms. Of the nature of these riches, in an Indian’s estimation at that time, somewhat may be inferred from Smith’s account of Powhatan’s treasure,—“A myle from Orapakes,” says he, “in a thicket of wood, he hath a house, in which he keepeth his kinde of treasure, as skinnes, copper, pearle, and beads, which he storeth up against the time of his death and buriall. Here also is his store of red paint for ointment, bowes and arrowes, targets and clubs.”

gathered before ours at *James-town*.* The next day we went to *Paccamagannant*, and they directed vs to *Assacomoco*,† where their king *Cassatowap* had an old quarrell with ensigne *Saluage* but, now seeming reconciled, went with vs, with another *Werowance*, towards *Mattapanient*,‡ where they perswaded vs ashore upon the point of a thicket; but supposing it some trecherie, we returned to our boat: farre wee had not gone from the shore, but a multitude of *saluages* sallied out of the wood, with all the ill words and signes of hostilitie they could. When wee saw plainly their bad intent, wee set the two *Werowances* at libertie, that all this while had line in the cabbins, as not taking any notice of their villanie; because we would convert them by courtesie. Leaving them as we found them, very ciuill and subtile, wee returned the same way wee came, to the laughing king on the eastern shore,§ who told vs plainly, *Namanicus* would have allured him into his countrie under colour of trade to cut his throat.

“This *Thomas Saluage*, it is sixteene yeares since he went to *Virginia*, being a boy, hee was left with *Powhatan*, for *Namontacke*, to learne the language,|| and as this author affirmeth, with much honestie and good successe, hath serued the publike without any public recompence, yet had an arrow shot through his

* Although no date of the *year* is annexed to these “Observations of John Pory,” as published in Smith’s History, yet as Mr. Chalmers, in his statement of them, affixes the year 1620 thereto, and the order of inserting them in Smith’s History nearly corresponds with the same date, we must suppose, that the month of “October” above mentioned was that of the year 1620. As to the country being hot in that season, we know, that there is sometimes some very warm weather throughout Maryland in the first part of the month of October. The warmth or coldness of the climate does not correspond exactly with the sun’s declination. It is much colder in the spring of the year, (about the first of March,) than in the autumn, (about the first of October,) although the sun is at both these times nearly of the same altitude; the frosts of the preceding winter having chilled the earth and atmosphere. To gather corn in October is not usual at this day in Maryland, it not then being sufficiently hardened for keeping; but savages, being commonly improvident, might sometimes imprudently gather their corn too early; especially if they meant to sell it.

† Neither of these places is laid down on Smith’s map, and no designation of their scites is suggested above.

‡ We have before supposed, that the Indian town, called *Mattapanient*, was situated in St. Mary’s county and on the Patuxent not far from its mouth.

§ The name of this “laughing king,” (of Accomack,) “on the Easterne Shore,” is not mentioned. Why he was called the *laughing* king, is no where explained; but it was most probably from some peculiarity in his countenance and manner.

|| He was left with Powhatan, in exchange for an Indian boy named *Namontacke*, in the year 1607, when capt. Newport went to visit Powhatan at *Werowocomoco* on Pamunkie or York river. *Smith’s Hist.* vol. i. p. 167.

SEC. VII.
1620.

SEC. VII. body in their service.* This laughing king at *Accomack*, tells
 1620. vs the land is not two daies journey ouer in the broadest place,
 but in some places a man may goe in halfe a day, betwixt the
 baye and the maine ocean, where inhabit many people, so that
 by the narrownesse of the land there is not many deere, but most
 abundant of fish and fowle.† In February also‡ he travelled§
 to the south river *Chowanock*, some sixtie miles over land, which
 he found to be a very fruitfull and pleasant country, yeelding
 two haruests in a yeere, and found much of the silke grasse for-
 merly spoken of, was kindly vsed by the people, and so re-
 turned.”

From these “travels” of Pory, a conclusion seems to have
 been drawn by a learned annalist, which the account thereof,
 stated as above by *Smith*, does not warrant. As his inference
 from them seems to have an immediate bearing upon the subse-
 quent dispute between the Penns and Lord Baltimore, which
 agitated both their provinces for a great length of time, it will
 be best to attend to the whole of what the annalist has said there-
 on.—“From the date of the original discovery of *Smith*,” he
 says, “the Virginians were too much occupied, for several years,
 either in procuring food or in defending themselves against the
 attacks of a subtle enemy, to find leisure to explore more mi-
 nutely the capacious Chesapeake, so justly praised for beauty
 and commodiousness. John Pory, however, sailed, during the
 year 1620, into the great bay northward; and, though he did not
 penetrate to its source, he discovered, as he assures us, one hun-
 dred English happily settled, who were animated with the hope
 of a very good trade of furs. He adventured soon after sixty miles

* There is frequently some confusion in *Smith*’s narrations, in respect to the
person whose language he delivers. In the former part of part of these “obser-
 vations of Pory,” he seems to have used the language of Pory, as if spoke or
 written by Pory himself. But here, immediately above, he brings himself into
 view, and speaks of *Pory* as the “author” who “affirmeth.”

† The peninsula which constitutes the eastern shore of Virginia, is nearly of
 an equal breadth from the divisional line between Virginia and Maryland, of the
 38th degree of latitude, to Cape Charles, and not exceeding twelve miles “in the
 broadest place betwixt the bay and the maine ocean.” A “daies journey,” above
 mentioned, in the meaning of the Indian king, must have been a journey on
 foot; so that twelve miles must have been an easy half day’s journey. But it is
 possible, that this king, when he said, that it was “not two daies journey ouer
 in the broadest place,” might have alluded to the breadth of the whole peninsula
 from the head of the Chesapeake to Cape Charles; in which case also, he would
 not have been very incorrect.

‡ This must have been in *February*, 1620, *old style*. (1621, N. S.)

§ Here *Smith* speaks in his own person, and means, that *Pory* “travelled,” &c.

over land, through a pleasant and fruitful country to the South river. And, on its margin, he was received with friendly entertainment by the ruling sachem of the land, who seemed extremely desirous to enter into a league of amity and commerce with the Virginians.* Thus neither the French, nor Dutch, nor Swedes, possessed then any settlements on the banks of the Delaware; because Pory must have either seen traces of their possession, or at least heard something of their renown."† It is evident from this concluding sentence of the annalist, that he erroneously understood "the *South* river *Chowanock*," to which Pory travelled in February, 1620–1, as Smith states to have been the same as the modern *Delaware* river, to which the Dutch, soon after their settlement at Manhattan, gave the name of *South* river in contradistinction to the Hudson, which they called the *North* river. He seems to have been uninformed, or to have not recollected, that there was a river in North Carolina, formerly called the *Chowanock* river, but more modernly the *Chowan*, on which the Indian nation, called the *Chowanocks*, formerly lived.‡ To their town it was, that Smith sent the messengers, as before stated, to search for the colonists under *White*. "*Southwards*," says he, "we went to some parts of *Chowanock* and the *Mongoags* to search for them left by Mr. *White*." So in another place he speaks of the *Chisapeacks* and *Nandsamunds* as living on "the *Southerne* shore:"§ meaning south of James river. From hence it would appear to have been very natural for an inhabitant of Virginia on the James river, in speaking of the *Chowan* river, to call it "the *South* river," it being in truth the most considerable river immediately *south* of the James river. The distance—"sixtie miles over land,"—corroborates this supposition; for, from James-town, in a strait line "over land," to the point or neck of land formed by the confluence of the rivers Nottoway and Meherrin with the Chowan, and where, as it would seem, the great town of the Chowanocks was situated, it measures, by Maddison's map, fifty miles at least, and we may suppose by the windings of an Indian path much more. It is thus then apparent, that our learned annalist has accidentally committed an error

* The annalist here makes a reference to "Purchas's Pilgrims, 4 v. p. 1734–7.

† Chalmers's Annals, p. 206.

‡ In Smith's small map or sketch of what he calls "Ould Virginia," that is, of the country round about *Roanoke* island, he has laid down the river, on which Edenton now stands, as "*Chowanock fluv.*" *Chowanock* river.

§ Smith's Hist. vol. i. p. 190.

SEC. VII. here, in supposing that the river Chowanock, to which Pory
 1620. travelled in February, 1620-1, was the Delaware river, called by the Dutch, the South river; and consequently, that his inference therefrom, to wit, that "neither the French, nor the Dutch, nor Swedes, possessed then any settlements on the banks of the Delaware," though certainly true in fact, was, however, erroneously drawn.* But the most important error, into which his statement is calculated to lead the reader, is, that the "one hundred English happily settled," said to be discovered by him, "when he sailed into the great bay *northward*," must have been so settled in the country now called Maryland. This, however, is easily accounted for, without such supposition, when we recur to Smith's preceding statement of Pory's travels. That "he sailed into the great bay *northward*, though not to its source," is entirely verified by his voyage to the Patuxent, and the "muster," which he took "of the companies tenants," at Accomack, (Cheriton,) together with the "ten men," with whom he was "provided to plant the secretaries land on the easterne shore," amounts to very strong proof, that the "one hundred English happily settled," were those so settled on the company's and secretary's lands on the eastern shore of Virginia. That these "tenants" and settlers there should have been "animated with the hope of a very good trade of furs," is indeed a circumstance not so easily to be reconciled at this day, when not only the numerous tribes of Indians, who once inhabited all along the eastern shore or coast of the Chesapeake, but also the animals that once abounded in this country and afforded this "trade of furs," have been all entirely extirpated. There is evidence, however, from both history and tradition, to shew, that the country now composing the lower counties of the eastern shore of Maryland, adjacent to the eastern shore of Virginia, particularly on the rivers of those counties, the Nanticoke, (or Cuscarawaocks,) the Wighcomoco, and the Pocomoke, abounded in all these animals, which could support a trade in peltry. This receives considerable corroboration from what Smith states on the Cuscarawaock, when he first visited them. "Here doth inhabite," says he, "the people of Saripinagh, Nause, Arseek, and Nantaquak the

* The first *Dutch* settlement on the Delaware, as appears from Proud's Hist. of Penn. vol. i. p. 110, was at or near *Glocester*, in New Jersey, in the year 1623, and the first *Swedish* settlement on that river appears to have been at the mouth of Christiana creek, in the year 1631. This last is to be inferred from a small *Swedish* History of "New Sweedland," purporting to have been written by Thomas C. Holm, late of New Sweedland, and published in Stockholm in 1702;" a translation of which has been lately republished in the Collections of the New York Historical Society, vol. ii. p. 355.

best merchants of all other salvages;”—and in another place, SEC. VII.
1620. where he speaks “of the natural inhabitants of Virginia,” meaning the Indians thereof, he says,—“Their manner of *trading* is for copper, beads, and such like, for which they give such commodities as they have, as skinnes, foule, fish, flesh, and their country corne.” In these articles, particularly skins, the Indians inhabiting on the Pocomoke and other rivers just mentioned, might with great probability, have been diligent traders with the first English settlers on the eastern shore of Virginia. From all which it results, that the “travels of Pory,” in no respect whatever, warrants the supposition, that any Englishmen whatever were then, in the year 1620–1, settled in any part of that territory or country, for which Lord Baltimore, in the year 1632, obtained his grant or patent.

The foregoing extracts appear to comprise every thing in Smith’s History of Virginia, that has any material relation to his discoveries of those parts of the Bay of Chesapeake, which now form the State of Maryland. Smith being the first discoverer of those upper parts of this Bay, and his narrations concerning those discoveries being deemed the best and indeed the only authentic source of what is said by other writers thereon since, there scarcely needs an apology to the reader for their insertion herein. The mode, we have adopted, of giving the original text with comments thereon, has been occasioned by the numerous mistakes, which our own, as well as other writers, upon the early part of the history of Virginia, have fallen into. The style of Smith’s writings being now obsolete, and much liable to misconstruction, it is deemed to be more candid to give the reader an opportunity of forming his own judgment by a perusal of the original text itself; especially as the insertion thereof occupies but a very little more space, than would a full and comprehensive narration thereof with the necessary remarks thereon.

A few general remarks on the character and writings of this celebrated founder of the colony of Virginia, as introductory to a few further comments on one or two passages in his foregoing summary account of Virginia, not before noticed, may be here indulged. It cannot but occur to every reader, who will take the pains to peruse carefully the whole of Smith’s General History of Virginia, including his own private adventures in his early life, that he must have been naturally endowed with most uncommonly vigorous powers both of body and of mind. The hardships, which he appears to have gone through, from his first

SEC. VII. departure from England while a mere youth, and during his
 1620. captivity by the Turks, to an advanced period of his life in the conclusion of his discoveries in New England, without any apparent interruption to his health, clearly indicate the athletic powers of his person; while at the same time the correct judgment, which he has displayed, in his conduct on various difficult and trying occasions, and in his remarks on both men and affairs, together with the uncommon talents he has exhibited, not only in the compilation of his writings, but more particularly in the formation of his map of the Chesapeake with the adjacent country, which accompanies his work, and all this too with but a very slender education, as he must necessarily have had, from his early roving disposition, demonstrate that the vigour of his mind was coequal with that of his body, and that he was thus by nature endowed with almost superhuman qualities for the most arduous undertakings. But it often happens, that in a portrait of the most excellent character we discover a blot or speck, which we could wish to obliterate. A consciousness of such superior endowments, as those which Smith possessed, naturally begat in him, not only a superciliousness towards the opinions of others, but also occasional ebullitions in his writings indicative of his liability to the sensation of *vanity*—the too common infirmity of great men. For this, however, let him make his own apology.—“I know,” says he, “I shall bee taxed for writing so much of myselfe, but I care not much, because the judicall know there are few such souldiers as are my examples, have writ their owne actions, nor know I who will or can tell my intents better than myselfe.”*—To this may be added in his behalf, that when he wrote his history, his mind smarted with the ingratitude of the Virginia Company towards him.—“In neither of those two countries,” says he, meaning New England and Virginia, “have I one foot of land, nor the very house I builded, nor the ground I digged with my own hands, nor ever any content or satisfaction at all.”†—Such appeals to the world, when made by such men, are peculiarly interesting.

But partial as we may be to the character of this truly great man, there is another characteristic trait discernible in his writings, which demands some little notice, inasmuch as it seems to be necessary to be taken into consideration by every reader on a

* Smith's Hist. Vol. ii. p. 92.

† Ibid. p. 102.

perusal of his history. He certainly had no small propensity, in his several narrations, not only of his own private adventures, but of his discoveries of new countries, to surprise his readers with something *marvellous*. An example of this, though it is apparently a trivial circumstance, occurs in his account of his extraordinary stature of one of the *Susquehanock* Indians; herein just before stated;—"the calfe of whose leg was three quarters of a yard about."—Now, supposing the calf of the leg of a man of ordinary height, say of five feet ten inches, and of a proportional personal form, measures sixteen inches round, this Indian, the calf of whose leg was three quarters of a yard or twenty-seven inches about, would have been, "with the rest of his limbs answerable to that proportion," about nine feet ten inches in height. But as this little circumstance, though extraordinary, is not beyond the bounds of *possibility*, or indeed of *probability* as an *individual* instance, we ought not to condemn Smith too hastily. It is possible, that one race of men may be taller and stouter in their form than another, as it is in families of Europeans, and upon the same principle might be so in a whole tribe of Indians. So, the Indians, on the Nanticoke and Wighcomoco might have been generally of less stature than ordinary, as stated by Smith, and the Susquehanocks much larger. So, in our recent accounts of the *Osages* near the Missouri, they are represented as a people of "uncommon stature and undoubtedly somewhat above the common size of men." This is very judiciously attributed by the writer, "to their living plentifully in a very healthy country, the constant exercise of hunting, the frequent removal of their camps, and from being cleanly in their persons, and making free use of the bath."*—These causes, or some of them might have operated in rendering the Susquehanocks of more than ordinary size. On a like principle it may be remarked, that it is probable, that the unhealthiness of the country adjacent to the rivers Nanticoke and Wighcomoco might have diminished the stature of the Indians thereon, agreeably to Smith's statement. The same principle may be applied to the *Patagonian* Indians of South America, of whose extraordinary stature, however, contradictory accounts have been handed down to us. In the account of the voyage of their first discoverer Fer-

SEC. VII.

1620.

* See "Notes on the Missouri river, &c. by a Military Gentleman," in the *Analectic Magazine* for 1820.

SEC. VII. didand Magellan in the year 1519,* the description there given of one of these Patagonians much resembles that of one of the Susquehanocks as before stated by Smith.—“His bulk and stature was such as would easily allow him the character of a giant; the head of one of their middle-sized men” (Spaniards) “reached but to his waist, and he was proportionally big. His body was formidably painted all over, especially his face. For his apparel he had the skin of a beast clumsily sewed together. The arms that he brought with him were a stout bow and arrows.”—In the voyage of Sir Thomas Cavendish, which occurred in 1586, a similar account is given of these Patagonians. The measure of one of their feet was eighteen inches in length, and his height seven feet and a half. In the voyage of *Van Noort*, (a Dutchman,) in the year 1599, this extraordinary stature of the Patagonians is confined to one of their tribes only, the rest being of the common size. The Indians of this gigantic tribe are there stated to have been ten and twelve feet high. In Sebald de Weert’s voyage, which occurred in the same year, the savages, they met with near Magellan’s straits, are stated to have been ten or eleven feet high; but in the Dutch voyage by Jaques le Hermite, in 1623, they are said to be “very strong and well proportioned, and generally about the height of the people in Europe.”—In Anson’s voyage, it is stated, that they did not see any of the inhabitants of Patagonia, except those near to Buenos Ayres; but in Commodore Byron’s, which was between the year 1764 and 1766, the Patagonians are again represented as giants. He says,—“One of them, who afterwards appeared to be a chief, came towards me; he was of a gigantic stature, and seemed to realize the tales of monsters in a human shape: he had the skin of some wild beast, thrown over his shoulders, as a Scotch highlander wears his plaid, and was hideously painted. I did not measure him, but if I may judge of his height by the proportion of his stature to my own, it could not be much less than seven feet.”—The statement of this same interview with the Patagonians made by Mr. Clarke, who was one of commodore Byron’s officers then present with him, and whose account thereof was addressed to the secretary of the Royal Society and published in their philosophical transactions, goes beyond the commodore’s.—“We had not got,” says he, “above

* See this and some of the subsequent voyages above mentioned in Harris’s *Collection of Voyages and Travels*, vol. 1, p. 7.

ten or twelve leagues into the straits of Magellen from the Atlantic Ocean, before we saw several people upon the north shore, (the continent,) and with the help of our glasses could perceive them beckoning to us to come on shore, and at the same time we observed to each other, that they seemed of an extraordinary size.”—After stating the incidents accompanying their going on shore, Mr. Clarke proceeds:—“We were with them near two hours at noon-day, within a very few yards, though none had the honor of shaking hands with them but Mr. Byron and Mr. Cummings;” (the commodore and his first lieutenant;) “however, we were near enough and long enough with them to convince our senses so far as not to be cavilled out of the very existence of these senses at that time, which some of our countrymen and friends would absolutely attempt to do. They are of a copper colour, with long black hair, and some of them are certainly *nine feet*, if they do not exceed it. The commodore, who is very near six foot, could but just reach the top of one of their heads, which he attempted, on tip-toes, and there were several taller than him on whom the experiment was tried. They are prodigious stout, and as well and proportionally made as ever I saw people in my life. The women, I think, bear much the same proportion to the men as our Europeans do; there was hardly a man there less than eight feet, most of them considerably more; the women, I believe, run from seven and a half to eight.”*—In captain Wallis’s voyage, which was immediately after commodore Byron’s, their stature seems to be rather lowered to the common standard; and in captain Cook’s first voyage, the inhabitants of Terra del Fuego, who were probably the same people as the Patagonians, are expressly stated as being “men, who were large but clumsily built, their stature was from five feet eight to five feet ten.”—The truth of the subject seems to be reduced to this:—that every species of mankind, for there are undoubtedly different species of mankind, as well as there are different *species* and *genera* of other animals,) have one ordinary height peculiar to that species, but from which some anomalous prodigies will occasionally vary. The American *Indians* generally, among whom we may include the Patagons, have been deemed much taller in their stature than any other species of mankind yet known. That there have been individual men of ten feet in height among Europeans also, has been asserted by many credible writers and

* Annual Register for 1768, p. 68.

SEC. VII. philosophers, though considered by them, as just mentioned, as anomalous prodigies or *ludibria naturæ*. Thus then, it would seem, that the illustrious founder of Virginia—Smith, has not exceeded the bounds of *possibility*, although his Susquehanock Indian should have been ten feet high.

The important fact, stated by Smith, in the conclusion of the preceding extract from his General History of Virginia, deserves also a more particular consideration. The “sundry languages” spoken by the “many severall nations,” who in his time occupied the country, which now composes the States of Virginia and Maryland, so far as they border on the Chesapeake, form a subject well worth the attention of every philosophic philologist. This diversity of languages among nations or tribes of people of such small population and contiguous neighbourhood to each other, as these Indians herein enumerated by Smith, seems to be accountable for, only as a natural consequence of the retirement and solitude, in which savages, especially those of America, thinly scattered over the earth, delight to dwell. A man and his wife, seated in some obscure spot of the country, would in process of time generate a family ; which again, in two or three generations more, would enlarge into a tribe. Unwilling to intermix with other tribes, lest their own peace and quiet, together with the little local possessions, which they had carved out to themselves in their forests, should be interrupted, they discourage all unnecessary communication with other neighbouring tribes. A peculiar language, or a dialect of a language, among such one tribe is then the natural result. Reserved and unsocial with their neighbours, they become prone to resent the slightest injury with war. The frequency of wars among them again contributes to the preservation of their own present language or dialect. It is only from some such causes, that we can trace this peculiarity among savages ; which seems to have been prevalent not only with those of America, but at this day in Africa also. The unfortunate Mungo Parke was stopped in his passage through several small tribes or nations of Negroes, until he either learned their language or procured an interpreter ; when he was enabled to pass on to others. Thus it was with Smith in his exploration of the Chesapeake. The “many severall nations of sundry languages, that environed Powhatan’s territories,” as just mentioned by him, ten in number, were all, excepting the Massawomecks or Iroquois, seated on the shores

of the Chesapeake, or not far distant therefrom, and in that space of the country now comprised within the State of Maryland and within that part of the State of Virginia lying east of the Allegany mountains; the local limits of the whole of which country we should suppose to be too narrow at this day, to preserve for any length of time among civilized people ten different languages in their original purity.

Although the peculiar features of the countenance, colour of the skin, texture and colour of the hair, and the exterior form and contour of the whole human figure, obviously bespeak the *Indian* race of people on the continent of America, both north and south, to have been a distinct *species* of mankind, different from the rest of the human creation, yet curiosity or the love of knowledge will always prompt our endeavours to pursue our inquiries still further, with a view of tracing the origin, migrations, and places of residence, of the several *varieties* or tribes of this same *species*. In doing this, no circumstance aids us more effectually than an attention to and an investigation of their several languages or the different dialects thereof. Philosophical philologists also may very properly amuse themselves with disquisitions on these several languages of our aborigines, with a view to advance the science of universal grammar and the structure of language in general. Views of this sort seem to have lately actuated the American Philosophical Society of Philadelphia; who have by their influence called forth an interesting "Historical account of the Indian nations, who once inhabited Pennsylvania and the neighbouring states, by the Rev. John Heckewelder, of Bethlehem," published in 1819. This gentleman having been for many years a missionary and resident among the Indians in Pennsylvania and on the Ohio, and having acquired a perfect knowledge of their language, his "Historical account" possesses an authenticity, which demands considerable attention. But, on a perusal of his work, the reader cannot but be struck with the unaccountable circumstance, that in no part thereof has he taken the least notice of Smith's account of the Indians just herein before enumerated by him, although many of these Indians belonged to particular tribes of the great nation, which he calls *Lenni Lenape*, or Delaware, whom he represents as covering all that part of the sea-coast from the tide-waters of the Potowmack to the Hudson of New-York. He must, or ought to have known, that Smith's History of Virgi-

SEC. VII. nia, he being one of the first settlers thereof, has always held, with regard to the aborigines of our country, paramount authority over all other histories ; for a very obvious reason, that therein alone we see these aborigines in their primeval state. The time of Mr. Heckewelder's knowledge of them being of modern date, necessarily makes his view of them, though still highly interesting, yet far inferior in interest to that of Smith ; their manners and customs having undergone innumerable alterations by their intercourse with Europeans from the time of Smith to that of Mr. Heckewelder, a period of near a century and a half. Even in the many passages in Mr. Heckewelder's book, where he speaks of the Nanticokes as a tribe of the Lenape, he takes no notice of what Smith has said of them, as to their state and condition when the latter first discovered them on the banks of the Cuscarawaock. There is, indeed, strong presumption, from the great extent of the Lenape language, together with the tradition of that nation, that their territories might formerly have extended from the tide-water of the Hudson, near Albany, to those of the Patowmack and Patuxent ; and, if the Nanticokes were once a tribe of the Lenape, and their language a dialect of the language of that nation, the Lenape territories might also have comprehended all the Eastern Shore of Maryland, and the several tribes thereof. There is a circumstance mentioned in Smith's History of Virginia, which seems to corroborate the latter part of the preceding supposition. It is therein stated, that the part of the peninsula of the Eastern Shore, which was then deemed, and is still as, a part of Virginia, formed also a part of Powhatan's territories ; and that the Accomacks and Accohannocks, the two tribes, who occupied the present counties of Northampton and Accomack, were of the Powhatan nation and spoke that language. But, as Smith did not explore any part of the present territories of Maryland on the Eastern Shore, immediately adjacent to the division-line between Virginia and Maryland, nearer than the Cuscarawaock, which we have herein before endeavoured to prove to have been the Nanticoke, we are uninformed, how far Powhatan's territories on the Eastern Shore extended northward, or whether they comprehended any of the Indians north of the before mentioned division-line. A small Indian town, or a remnant of a tribe of Indians, who dwelt at or near *Chingoteague*, on the sea-coast, near where the before mentioned division-line strikes the ocean, is mentioned by *Beverly*,

in his History of Virginia, first published in 1705, as then ex-SEC. VII.isting, of whom he says,—“The few remains of this town are joined with a nation of Maryland Indians.”*—But, of the language of these Indians of Chingoteague, or of the other Indians of Aecomack and Northampton, mentioned by Beverly, in 1705, he has not informed us. The latter, without doubt, continued to speak the Powhatan language, as in Smith’s time, and it seems to be equally certain, that the Nanticokes did not speak the Powhatan language. From all which it may be inferred, that some line of division between the Indians of the Eastern Shore of Maryland and Virginia, existed prior to that drawn by the Europeans afterwards, and that this circumstance, of a body of *Powhatan* Indians being settled on the Eastern Shore of the Chesapeake, prior to the first arrival of the Virginia colonists in 1607, was the primary cause of planting settlements there so early as Pory’s excursions in 1620, if not before. If then all the tribes of Indians on the Eastern Shore of the Chesapeake, north of the Powhatans in Accomack and Northampton, were of the Lenape stock, as implied by Mr. Heckewelder’s “Historical Account,” we must suppose, that their languages were dialects of that of the Lenape, and consequently that the language of the Nanticokes, confessedly the most numerous and powerful tribe on the Eastern Shore of Maryland, was also a dialect of that language. The words of Mr. Heckewelder are,—“As far as we are able to judge from the little knowledge that has been transmitted to us of the languages of the Indians, who once inhabited Maryland, Virginia, and North Carolina, they all appear to have belonged to the same stock; the Nanticokes have been shewn to have been intimately connected with the Lenape,† and among those, who called them *grand-father*. Two pretty copious vocabularies of their language, in the possession of the Historical Committee of the American Philosophical Society, one of them communicated by Mr. Jefferson and the other by myself, prove it beyond a doubt to have been a dialect of the Lenape.”—To this Mr. Heckewelder subjoins a note of considerable importance, as follows:—“The late Dr. Barton, in the work above quoted,” (to wit, Barton’s *New Views*, appen. p. 5, edit. 1798,) “seems to doubt this fact, and relies on a series of

* Beverly’s Hist. Virg. (edit. of 1722,) p. 199.—*Oldmixon*, in his *Brit. Emp. Amer.* vol. 1, p. 231, copies Beverly herein.

† In a former part of his work, which will be herein presently stated.

SEC. VII. numerals, which I once communicated to him, and was found among the papers of the late Rev. Mr. Pyrlæus. But it is by no means certain, that these numerals were taken from the language of the Nanticokes, and the vocabularies above mentioned leave no doubt as to the origin of that dialect."

Although it is possible, as has been just before admitted, that the Nanticokes were originally connected with the Lenape, and their language might possibly have been a dialect of that of the Lenape, yet the first position advanced by Mr. Heckewelder, as just above, to wit: that *all* the different nations or tribes of "Indians, who once inhabited Maryland, Virginia, and North Carolina, appear to have belonged to the same stock"—seems to have been much too large for any proof he has produced in support of it. If the languages of two nations so radically vary from each other, as to require interpreters in the communications of the two nations with each other, it raises so strong a presumption, that their common origin, if it ever happened, must have been very remote, as to require some strong contrary facts to rebut that presumption. It is possible, indeed, that interpreters may be necessary in cases where the languages only vary in dialect, and this might have been the case in regard to the Susquehanocks, the Tockwocks, the Nanticokes, and the Lenape. But, the variance between the languages of the Lenape and the Powhatans is so obvious and observable, the latter of which was that of all the Indians on both the western and eastern shores of Virginia, together with that part of Maryland lying between the Patowmack and the Patuxent rivers, that Mr. Heckewelder's first position, as just stated, must be admitted with much doubt and hesitation. Strong evidence to the contrary arises from a comparison to be made at this day between the vocabulary of the Powhatan language as preserved by Smith, and that of the Lenape as given by others. In the *numeral* words of the first, there is scarcely a syllable that indicates the same sound as in those of the latter.* From which it

* The following lists of numeral words in the Powhatan and Delaware (or Lenape) languages are taken from two different authors, but *both Englishmen*; the authenticity of the first of whom (Smith, the founder of Virginia,) cannot be questioned, in whose history is found a small vocabulary of the Powhatan language, from whence the list below of *numeral* words in that language is taken. The second list, to wit, that of the Delaware (or Lenape) language, is taken from a very old History of West New Jersey, published with that of Pennsylvania, by *Gabriel Thomas*, in the year 1698. He was, as he therein states, one of the first settlers in Pennsylvania, arrived there in the first ship which Penn

results, that so far as variance in language constitutes a pre-SEC. VII.sumption of variety in their origin, the Powhatans and the Lenape, if ever they "have belonged to the same stock," must have been so in some very remote time long past. It is true, that there are indelible marks in the exterior figure and colour of the North American Indians, which demonstrate them to be a peculiar *species* of mankind, and that there is a greater sameness in those exterior appearances than in any other species of mankind known in any of the other quarters of the globe, (probably because they have been less contaminated with mixtures of other species,) yet, supposing all these North American Indians to have had originally one common parentage here in America, this common origin, or "stock," must have been in ages so remote as long since to have admitted a total and radical variance in many of their languages. Such we may suppose to have been the case between the Powhatans and the Lenape.

sent for the settlement of that province in the year 1681, and resided in Pennsylvania about fifteen years.

POWHATAN NUMERALS, (According to Smith.)	DELAWARE (OR LENAPE) NUMERALS, (According to Thomas.)
1. Necut	1. Kooty
2. Ningh	2. Nisha
3. Nuss	3. Nacha
4. Yowgh	4. Neo
5. Paranske	5. Pelenach
6. Comotinck	6. Kootash
7. Toppawoss	7. Nishash
8. Nusswash	8. Choesh
9. Kekatawgh	9. Peshonk
10. Kaskeke	10. Telen

It will be found upon a comparison of the above list of Delaware numerals by Thomas with the German (or Zeisberger's) list of the same, as published in Duponceau's correspondence with Heckewelder, that they are as nearly similar to each other as the idioms of the German and English languages would allow; always supposing that a German or a Frenchman would write down the same sound with letters somewhat variant from those which an Englishman would use. So also of the Swedish vocabulary of Delaware numerals stated also in the same correspondence. Other words and expressions indicate a radical difference between the Powhatan and Lenape languages. Mr. Heckewelder states, in the above mentioned correspondence, that "the word *Mannitto* for God, or the Great Spirit, is common to all the nations and tribes of the Lenape stock." But no such term is mentioned by Smith (who was much conversant with the Powhatans,) as designating their idea of God. "Their chiefe God," he says, "they worship, is the devill; him they call *Okee*, and serue him more of feare than loue." "Their other Gods they call *Quiyoughcosughes*." This variance, as well as many others, too numerous here to detail, seems to indicate a more remote common origin than Mr. Heckewelder seems to suppose when he states the Powhatans "to have belonged to the same stock," as the Lenape.

SEC. VII. As to the extent of the Lenape territories on the western shore of Maryland being bounded by the tide-waters of the Patowmack, as stated by Mr. Heckewelder, this receives some confirmation from a circumstance mentioned in *Pory's* travels, as herein before stated. When Pory went, in 1620, to settle the secretary's lands on the eastern shore of Virginia, he there met with *Namenacus*, king of a large tribe on the Patuxent river in Maryland, called *Powtuxants*, herein before mentioned. He (*Namenacus*) had come to the eastern shore of Virginia, in order to meet with one Thomas Salvage, an Englishman, who, when a boy, having been presented to the emperor Powhatan in exchange for Nomentacke, an Indian boy, had long lived with the Powhatans, and having completely learned their language, was in the habit of occasionally acting as an interpreter between the Indians and the English. Meeting with Pory and Salvage at Accomack, *Namenacus* invited them to visit him at *Pawtuxunt*. Pory accordingly went, and was attended by Salvage, who acted on all necessary occasions as an interpreter. If then the Indian language, which this interpreter had learned when a boy with the Indians, was the Powhatan language, as we must necessarily suppose it to have been from his learning it with and under the emperor Powhatan, it seems to follow, that the several tribes of Indians on the Patuxent, with whose language Salvage the interpreter seems to have been familiar, spoke the Powhatan language, and might therefore be considered as among the confederate tribes, who belonged to Powhatan's empire. This corresponds with what is stated by Mr. Jefferson and other writers, that Powhatan's territories extended along the Chesapeake from James river to the Patuxent, and, as we may suppose, to the head of the *tide-waters* thereof, as also in like manner on the Patowmack, that is, to where the Lenape territories, according to Heckewelder, ended. This receives additional confirmation from what Smith states in one of his excursions to explore the Chesapeake,—that the western coast thereof, from the Patuxent to the head of the bay appeared to him to be uninhabited, or that he saw no inhabitants there, although in his ascent and descent of the bay he kept close to the western shore thereof, and went up the *Bolus* on Patapsco river a considerable distance. The early part of our History of Maryland also recognises the fact, that the Indians of the peninsula lying between the Patowmack and the Patuxent were grievously harassed by

the Susquehanocks, just previous to or about the time of the first settlement of the Maryland colony in 1634. We cannot suppose, however, that the whole of the western shore of Maryland, from the Patuxent to the Susquehanah, was uninhabited, at least to any great extent, into the back country, although Smith saw no Indians there: but it is possible, that the frequent excursions of the Susquehanocks against the Powhatans on the Patuxent and Patowmack might have driven away from the coast of the western shore of the Chesapeake any tribes, who would have wished to have remained there neutral or in peace, and that therefore none appeared to Smith on that coast. It is certain, that the Susquehanocks some how acquired a right to the greater part of both the western and eastern shores of Maryland, to wit: on the former from the Susquehanah river to the Patuxent, and on the latter from the same to the Choptank; for, by a treaty made between them and the government of Maryland, in the year 1654, they ceded to the latter all those parts of Maryland on both shores, as just described; as will herein after more particularly appear in its proper place.* This brings us then to an inquiry, whether the Susquehanocks also, as well as the Nanticokes, were a tribe, that is, a branch of the great "stock" of the nation called Lenape.

Although the Susquehanocks were certainly a tribe of Indians inhabiting within the province of Pennsylvania, yet I cannot find that Mr. Heckewelder has any where mentioned them as a distinct tribe, even as subordinate to his great nation—the Lenape. In like manner he has passed over in silence the other tribes of Indians mentioned by Smith as dwelling near the head of the Chesapeake, to wit, the Atquinachuks, who dwelt on the Delaware, in what is now New-Castle county in the Delaware state; the Tockwocks on the Sassafras river in Maryland, and the Ozinies on the Chester. These several tribes, under the

* The author has, in a previous publication of the introduction to this history, inserted a supposition that the western shore of Maryland was occupied prior to the arrival of the first Maryland colony, by a tribe or nation called the Shawanese. To this supposition he was led, by perceiving on Kitchen's map of the British colonies, published shortly after the treaty of 1763, that the Sawanoos (commonly called Shawanese,) had formerly a town situated on the Patowmack at or near to a place called *Old Town* in Allegany county, in Maryland. But the treaty of cession by the Susquehanocks to the Maryland colonists in 1654, together with the history of the *Sawanoos*, as stated by Heckewelder, seem to render it doubtful whether the Sawanoos ever occupied any part of Maryland lower down from the Allegany mountains, then Allegany county.

SEC. VII. wide extent, which he gives to the Lenape nation, must have been subordinate to the Lenape, whom they called their *grand-father*. But there is a circumstance stated by Smith, relative to some of these last mentioned tribes, particularly the Susquehannocks and the Tockwocks, which seems to militate against a supposition, that they were either subordinate to or under the government and control of the Lenape of Pennsylvania. Heckewelder states, that the Mengwe, who appear to have been the same as the Iroquois of the French, and the Massawomeks of Smith, long before any Europeans arrived in the country, had by *stratagem* "made women" of the Lenape. Although this seems to have been merely an excuse made by the Lenape for their want of prowess, in permitting the Mengwe to conquer them by *force*, as the latter allege they did,* or that the Lenape told Mr. Heckewelder this story, thinking thereby to flatter him with their approbation of the passive and non-resisting principles of the United Brethren, it being a very improbable story, that many thousand warriors of the Lenape should have been so tricked out of the natural principle of self-defence, yet it is evident, from Smith's History, that neither the Susquehannocks nor the Tockwocks were of these passive obedient principles. The description, herein before quoted from Smith, of his giant-like Susquehannock, whom he met with at the head of the bay, proclaimed him a warrior from top to toe, with his bow and arrows in one hand and his war-club in the other. Be assured, that this hero of the forest had no idea of non-resistance, if attacked either in his person or rights. Immediately prior to the first settlement of St. Mary's, the Susquehannocks had also been *waging war* upon the Indians of that part of Maryland. They did not, therefore, like the Lenape, consider themselves as *women* unfit for *war*. It is also mentioned by Smith, that these Mengwe or Massawomeks, when he met with them in the bay, shewed him their "greene wounds," which they had just received in a battle with the *Tockwhoghes*. The Tockwhoghes also, it seems too from

* In the treaty held at Philadelphia, in July, 1742, with the chiefs of the Six Nations, (these Mengwe,) together with the Delawares, (or Lenape) and other Indians, Canassatego, a chief of the Six Nations, on a complaint made by the governor of Pennsylvania to them against the Delawares, in a speech addressed to the latter, thus reproved them.—"How came you to take upon you to sell land at all? *We conquered you*; we made women of you; you know you are women; and can no more sell land than women; nor is it fit you should have the power of selling land, since you would abuse it." See Colden's Hist. of the Five Nations, 2d part, p. 79.

thence, had no ideas of the principles of passive obedience and non-resistance. Thus then the Mengwe had certainly never “made women” of either the Susquehanocks or the Tockwhoghes. It is possible, however, that the Susquehanocks, as they resided on the Susquehanah river within the present limits of Pennsylvania, and within what is supposed to have been the Lenape territories, might have been originally of the same “stock” as the Lenape; but it would seem, from the foregoing circumstance, that they were independent of and insubordinate to the government of the Lenape.

Although Mr. Heckewelder has thus passed over without notice, the Susquehanocks, the Tockwhoghes, and the Atquanachuks, notwithstanding the scites of their towns were clearly within the limits of his extensive Lenape territories, yet he has happily favored us with a more minute historical account of the *Nanticokes* of Maryland, than has ever yet before appeared in print. This traditional account of them, which, as he says, he had from one of their own chiefs, being highly interesting to many Maryland readers, will be best presented to them in his own words.

“The Delawares say that this nation, (the Nanticokes,) has sprung from the same stock with them, and the fact was acknowledged by White, one of their chiefs, whom I have personally known. They call the Delawares their grandfathers. I shall relate the history of the Nanticokes, as I had it from the mouth of White himself.

“Every Indian being at liberty to pursue what occupation he pleases, White’s ancestors, after the Lenape came into their country,* preferred seeking a livelihood by fishing and trapping

* The careless mode, in which Heckewelder has here used the relative pronoun—“their”—creates an ambiguity in the meaning of the above sentence. It might be construed to mean the “country” of either “White’s ancestors” or that of “the Lenape,” or, the “country” of both. Supposing it to be the language of White, it might mean “the country” of his ancestors;” but this would imply, that the country then enjoyed by the Lenape, particularly Pennsylvania, was originally that of the Nanticokes, prior to the occupation of it by the Lenape; which would seem to be repugnant to the supposition, that the Nanticokes were originally of the same “stock” as the Lenape, that is, that they were a *branch* of the Lenape stock.—Again, it might be construed to mean the “country” of the Lenape; which would be agreeable to the grammatical rule, that a relative personal pronoun always has relation to the next *antecedent* person spoken of. The fact, however, subsequently stated in the latter branch of the sentence,—that the Nanticokes “detached themselves” from the Lenape, seems to make the more probable meaning of the whole sentence to be, that the Nanticokes were formerly a constituent part of the whole Lenape nation, when that nation first

SEC. VII. along the rivers and bays to pursuing wild game in the forest; they therefore detached themselves, and sought the most convenient places for their purpose.* In process of time, they became very numerous, partly by natural increase, and partly in consequence of being joined by a number of the Lenape, and spread themselves over a large tract of country.† Thus they became divided into separate bodies, distinguished by different names; the Canai, they say, sprung from them, and settled at a distance on the shores of the Potowmack and Susquehanah, where they lived when the white people first arrived in Virginia; but they removed farther on their account,‡ and settled higher up the

arrived in Pennsylvania, the "country," most probably, above alluded to; the "country" of both; the Nanticokes being then one and the same as the Lenape nation; after which a part of these Lenape, "preferring to seek a livelihood by fishing," &c. "detached themselves" from the rest of the Lenape nation, and took the name of Nanticokes.

* This seems to intimate one of the causes for their settling on the Nanticoke; a river formerly abounding, not only in fish, but in those animals, which delight in the morasses and marshes adjacent to rivers, and whose skins furnish the best of furs; particularly beavers and otters. Hence Smith found them, as he states, the best *traders* he had met with, that is, in peltry, and hence they were subsequently called *trappers*.

† The "tract of country," which they occupied when they were first visited by Smith in 1608, could not have been very "large," when considered as the hunting-grounds of so large a tribe, unless we suppose, that the Cuscarawaocks, the Sarapinaghs, the Nanses, and the Nantiquaks, stated by Smith as dwelling on the Cuscarawaock river, when he saw them, were all of the Nanticoke tribe or nation; and this circumstance—the extensiveness of their "tract of country," above mentioned, corroborates the opinion, herein before mentioned, that the Cuscarawaocks and those other tribes just mentioned, were all one and the same people as those now denominated Nanticokes, inhabiting in different towns on the Cuscarawaock now the Nanticoke river. They must have occupied all the borders of that river on both sides, in Somerset as well as in Dorchester counties, from the head thereof, which is now within the Delaware state, to its mouth or junction with the Chesapeake. The *Nanticokes* are the only numerous and warlike nation of Indians recognized by our earliest records of Maryland as inhabiting in that part of the eastern shore, and under that name alone we now see them also here recognized and known in their traditional history by Heckewelder.

‡ The white people, it is well known, first arrived in *Virginia* in the year 1607; but, as they first settled on the James river, they certainly did not cause the removal of any Indians from the Patowmack, until long after the arrival of the Maryland colony there. It is moreover inconsistent with the intercourse had between the Virginians and the Indians on the Patowmack, as recognized in Smith's *History of Virginia*, until near the period of the arrival of the Maryland colonists. The Canai, or as they are more often called Conoys, if they ever inhabited on the shores of the Patowmack, must have had their dwelling place very high up that river, above "the tide-water" thereof, to which, Heckewelder says in another place, the Lenape territories once extended. It would seem therefore, that the Conoys could not have removed "on account of the

Susquehanah,* not far from where John Harris afterwards established a ferry.† The main branch, or the Nanticokes proper, were then living in what is now called the eastern shore of Maryland.‡ At length, the white people crowded so much upon them, that they were also obliged to seek another abode, and as their grandfather was himself, retreating back in consequence of the great influx of the whites,§ they took the advice of the Mengwe,|| and bent their course at once to the large flats at Wyoming,¶ where they settled by themselves, in sight of the Shawanos town, while others settled higher up the river, even

SEC. VII.

arrival of the white people," until long after the settlement of Maryland, perhaps not until the eighteenth century, when the Virginians and Marylanders might have begun to press upon them.

* Mr. Heckewelder says in another place, (Historical Account, &c. p. 26.)—"The Canai I call by their proper name. I allude here to those people we call Canais, Conois, Conoys, Canaways, Kanhawas, Canawese."—Again, (in p. 108.) "The Canai or Kanhawas, who have given their name to a river in Virginia which empties itself into the Ohio, are known to have been of the same stock," to wit, of the Lenape. From this it might be inferred, that the removal of the Conoys or Kanhawas from the Patowmack, "on account of the white people there," was in a retrograde direction across the Allegany mountains, where they naturally fell in with one of the two rivers, which from them took the name of the Kanhawa, probably the Little Kanhawa. A part of them, however, might have settled on the Susquehanah, as above stated; a fact, that seems to be corroborated by the record of the treaty held at Philadelphia, in July 1742, with some chiefs of the Six Nations, Showanese, and Delawares; at which treaty also are stated to have been present four chiefs, (therein named,) of the "Canoyias or Nanticokes, of Canestogo," that is, of Conostogo creek near Lancaster in Pennsylvania.—See the Treaty in Colden's Hist. part 2d, p. 58.

† In Evans's map of the "Middle Colonies," Harris's ferry is laid down, precisely on the same spot as that where the town called *Harrisburg*, the capital of Pennsylvania, now stands.

‡ As the words—"then living,"—appear to refer to the time "when the white people first arrived in Virginia," this corresponds with Smith's account of the *Nantiquaks* settled on the Cuscarawaoock, at the time of his discovery of them in the year 1603, the year after the first arrival of the white people in Virginia.

§ This seems to refer the necessity of the Nanticokes "to seek another abode," to about the middle of the eighteenth century; when the influx of the colonists into Pennsylvania began to cause the Delawares or Lenape, the "grandfather" of the Nanticokes, to retreat back into the interior parts of the Province.

|| Why they should have taken the advice of the Mengwe, (or Six Nations,) instead of their *grandfather* the Lenape, (or Delawares,) is to be accounted for only by the fact, that, at the time of the first migration of the Nanticokes from Maryland, about the middle of the eighteenth century, the Lenape (or Delawares) themselves were subordinate to and under the direction of the Mengwe or Six Nations, whether they had "made women of them" by force or by stratagem.

¶ This appears to have been the name of an Indian town, situated on the north west side of the east branch of the Susquehanah river, in Northumberland county, Pennsylvania.

SEC. VII. as high as Chemenk (Shenango) and Shummunk,* to which places they all emigrated at the beginning of the French war.† White's tribe resided there until the revolutionary war, when they went off to a place nearer to the British, whose part they had taken, and whose standard they joined; White himself had joined the Christian Indians at Scheckschaquon, several years previous to the war, and remained with them.

“Nothing, said White, had equalled the decline of his tribe since the white people had come into the country. They were destroyed in part by disorders which they brought with them, by the small pox, the venereal disease, and by the free use of spirituous liquors, to which great numbers fell victims.‡

“The emigration of the Nanticokes from Maryland was well known to the Society of the United Brethren. At the time when these people were beginning their settlement in the forks of Delaware,§ the Rev. Christian Pyrlaus noted down in his memorandum book, ‘that on the 21st day of May, 1748, a number of the Nanticokes from Maryland, passed by Shamokin in ten canoes, on their way to Wyoming.’—Others, travelling by land, would frequently pass through Bethlehem, and from hence through the Water Gap to Nescopeck|| or Susquehanah, and while they

* These were places on the highest branches of the Susquehanah river above the Pennsylvania line and within the limits of the present State of New York, and in the neighbourhood of the Six Nations.

† There were two “French wars,” to which the above expression might possibly apply:—the war between Great Britain and France, which commenced in 1744, and that, which commenced with Col. Washington's expedition to the Great Meadows in Pennsylvania in 1754. It is the latter, most probably, to which Mr. Heckewelder alludes.

‡ There is some obscurity here in Heckewelder's expression. It is uncertain, whether the relative pronoun—“they,” in the expression—“which *they* brought with them,—refers to White's tribe or “the white people.” White's tribe might have “brought with them,” when they migrated from Maryland to Pennsylvania and New York, those disorders; but is most probable, that Heckewelder meant it to have reference to the latter—the white people, to whom is most commonly attributed the introduction of those disorders among the aborigines of America.

§ That is, when the *United Brethren* were beginning their settlement there at Bethlehem. Not the *Nanticokes*. The Moravians, or United Brethren, began to build the town of Bethlehem, in Pennsylvania, in the year 1741.

|| An Indian town called *Nescopeck* is laid down on Evans's map of the Middle British Colonies, published in 1755, as then situated on the east side of the East Branch of the Susquehanah, about twenty-seven miles above the fork of that river, which is where the town of Northumberland now stands, and about thirteen miles below Wyoming, which was on the north west side of the said East Branch, as herein before mentioned.—Shamokin is a small creek, which empties into the Susquehanah on the east side thereof, below what is called the forks of Susquehanah at Northumberland, and just below a place called Sunbury.

resided at Wyoming, they, together with the Shawanese, became the emissaries of the Five Nations, and in conjunction with them afterwards endeavoured to remove the Christian Indians from Gnadenhutten, in Northampton county, to Wyoming; their private object being to have a full opportunity to murder the white inhabitants, in the war which they already knew would soon break out between the French and English. SEC. VII.

“These Nanticokes had the singular custom of removing the bones of their deceased friends from the burial place to a place of deposit in the country they dwell in. In earlier times, they were known to go from Wyoming and Chemenk, to fetch the bones of their dead from the Eastern shore of Maryland, even when the bodies were in a putrid state, so that they had to take off the flesh and scrape the bones clean, before they could carry them along. I well remember having seen them between the years 1750 and 1760, loaded with such bones, which, being fresh, caused a disagreeable stench, as they passed through the town of Bethlehem.*

* William Penn, and some other religious enthusiasts, whose minds were almost exclusively filled with the history of the Israelites, have expressed their “belief,” that the North American Indians were “of the *Jewish race*, that is, of the stock of the ten tribes;”—in support of which, they have fancifully stated some of the religious “rites” of the Indians; as that “they reckon by *moons*; they offer their *first-fruits*; they have a kind of *feast of tabernacles* ;” and some other customs. Had Penn been apprised of the above mentioned “singular custom” of the Nanticokes, he certainly would have deemed it as proof positive of their Jewish origin. When the Israelites made their exodus or escape out of Egypt, under Moses their leader, they carried with them, not only the *bones* of Joseph agreeably to his dying order, after his body had been embalmed according to the Egyptian custom, but, as is affirmed by the Jewish Rabbins, “every tribe brought away the *bones* of the heads of their family with them.” (See the *Anc. Univ. Hist.* vol. ii. p. 577.) Although Moses has not mentioned this latter circumstance, yet it seems to be corroborated by what St. Stephen said in his speech to the Jews a little before he was put to death. (See *Acts* vii. 15.) The other custom, just alluded to, and somewhat connected with that above mentioned, was more generally prevalent with the Indians both of Virginia and Maryland. The fact seems to be certain, as attested by both Smith and Beverly, in their histories of Virginia, that the Powhatans practised the custom of *embalming* the bodies of their kings or chiefs, and the particular manner of their doing so is described by each of them. The author of this work himself has often heard and learned, when he was a boy, from numerous persons well acquainted with the latter customs of the *Choptank* Indians of Maryland, who were situated within the same county as the Nanticokes, and within less than twenty miles distant from them, that the *Choptanks* observed the custom, even as late as the middle of the eighteenth century, of embalming the dead bodies of their chiefs and great men. When thus embalmed they were kept in a building set apart for that purpose, which was denominated by them—the *Quioccason* house,

SEC. VII. "They are also said to have been the inventors of a poisonous substance, by which they could destroy a whole settlement of people, and they are accused of being skilled in the arts of witchcraft; it is certain that they are dreaded on this account. I have known Indians who firmly believed that they had people among them, who could, if they pleased, destroy a whole army, by merely blowing their breath towards them. Those of the Lenape and other tribes, who pretend to witchcraft, say that they learned the science from the Nanticokes; they are not unwilling to be taxed with being wizzards, as it makes them feared by their neighbours.

"Their national name, according to the report of their chief, White, is *Nentégo*. The Delawares call them *Unéchtgo*, and the Iroquois *Seganiateraticrohne*.* These three names have the same meaning, and signify *tide-water* people, or the *sea-shore* settlers. They have besides other names, by-names, as it were, given them with reference to their occupation. The Mohicans, for instance, call them *Otayáchgo*, and the Delawares *Tayachquáns*, both which words in their respective languages, signify a "bridge," a "dry passage over a stream;" which alludes to their being noted for felling great numbers of trees across streams, to set their traps on. They are also often called the *Trappers*.

"In the year 1785, this tribe had so dwindled away, that their whole body, who came together to see their old chief White, then residing with the Christian Indians on the Huron river, north of Detroit, did not amount to 50 men. They were then going through Canada, to the Miami country, to settle beside the Shawanos, in consequence of an invitation they had received from them."†

There are a few legislative documents among the provincial

exactly the same term, at least in sound, as that used for the same purpose by the Powhatans, as related by both Smith and Beverly. The transition from embalming to removing the dead bodies of their chiefs or heads of families and tribes, in case of a compulsory removal of the whole tribe or nation, as was the case with both the Israelites and the Nanticokes, is natural, and rests not on religious superstition. In the case of parents, it is founded in that natural and pious affection towards them discernible even among the children of savages, and in the case of their kings and chiefs it originates from their esteem and veneration for them when living.

* *Roonon*, or as spelt above, "rohne," in the language of the Five Nations, means the same as *nation* or *people*. Colden's Hist. Five Nations, p. 61, and Tachanoontia's speech, in the treaty held at Lancaster, June 27th, 1744, in Colden's Hist. 2d part, p. 112.

† Heckewelder's Hist. Account, &c. p. 73—76.

records of Maryland, which are strongly illustrative, if not corroborative, of the preceding traditional history of the Naticokes; particularly as to the time and causes of their migration from Maryland, and somewhat of their conduct during what is called the French war of 1754-6. It is certain, that the white people on the eastern shore of Maryland began to "crowd upon" the Naticokes long before the middle of the eighteenth century, the period of their migration, as assigned by Heckewelder. It appears from an act of assembly of Maryland, of 1768, ch. vii., entitled, "An act for granting to the Nanticoke Indians a compensation for the lands therein mentioned," that large tracts of land had been surveyed, and patents of grant obtained thereon, as early as the years 1665 and 1695, within the limits of the little territory on the Nanticoke then occupied by these Indians. These tracts so surveyed and patented, three in number, contained the aggregate amount of 1664 acres, about two and a half square miles. These intrusions, in all probability, occasioned the first act of assembly, which appears on the records of Maryland relative to the Naticokes, entitled "An act for ascertaining the bounds of a certain tract of land, to the use of the *Nanticoke* Indians, so long as they shall occupy and live upon the same,"—first passed in the year 1698, and afterwards renewed in the year 1704. The preamble thereof does great credit to our ancestors of that period, and is as follows:—"It being most just, that the *Indians*, the ancient inhabitants of this province, should have a convenient dwelling place, in this their native country, free from the encroachments and oppression of the English; more especially the *Nanticoke* Indians in Dorchester county, who, for these many years have lived in peace and concord with the English, and in all matters in obedience to the government of this province: Be it enacted, &c., that all the land, lying and being in Dorchester county, and on the north side of *Nanticoke* river, butted and bounded as followeth:" (as stated at large in the act, containing, as I suppose, about fifty square miles,) "shall be confirmed and assured, and, by virtue of this act, is confirmed and assured unto *Panquash* and *Annotoughquan*, and the people under their government, or charge, and their heirs and successors forever; any law, usage, custom, or *grant*, to the contrary in any wise notwithstanding; to be held of the lord proprietary, and his heirs, lord proprietary and lords proprietaries of this province, under the yearly rent of one beaver skin, to be paid to his said lordship and his heirs, as

SEC. VII. other rents in this province by the *English* used to be paid. Provided always, that it shall and may be lawful for any person or persons, that hath formerly taken up and obtained any grants from the Lord *Baltimore* for any tracts or parcels of land within the aforesaid boundaries, upon the *Indians* deserting or leaving the said land, to enter, occupy, and enjoy the same; any thing in this law to the contrary notwithstanding." In further proof of the incroachments or "crowding upon" the Nanticokes by the English about the latter end of the seventeenth and beginning of the eighteenth centuries, may be mentioned an act of assembly passed at the same session last mentioned, to wit, the act of 1704, ch. 39, entitled, "An act declaring that the grantees of land, lying within the *Indians*' land, may have action of trespass against such persons as cut timber off their land, on pretence of having bought the same of the *Indians*." This last act seems to have principally related to the lands then occupied by the Nanticokes and Choptanks. We here see an abridgment of, at least, if not an encroachment upon, the rights of these unfortunate aborigines to the full enjoyment of the lands on which they lived. They were not permitted to exercise the same act of ownership over the lands which for ages they had occupied, as the English, who had just intruded on their possessions: they were not permitted to sell or dispose of the natural produce of their soil—the timber of their forests. Some further information, as to the situation of the Nanticokes, in the early part of the eighteenth century is to be derived from the act of assembly of 1711, ch. 1, entitled, "An act to empower commissioners to appoint and cause to be laid out three thousand acres of land, on *Broad* creek, in Somerset county, for the use of the *Nanticoke Indians*, so long as they shall occupy the same." The preamble thereof, states—"Whereas it is represented to this present general assembly, that the land formerly laid out for the use of the *Nanticoke Indians*,"—(that is, the lands on the Nanticoke allotted to them by the preceding acts of 1698 and 1704,)—"is now much worn out, and not sufficient for them: and that it is thought advisable that some further provision be made for them." The enacting clause thereof then provides, "that these three thousand acres should be laid out where the said Indians are now settled, in Somerset county, on *Broad* creek, in Nanticoke river." From this the necessary inference is, that a part of the Nanticokes were in the possession of this land on *Broad* creek prior to the

passage of this act of assembly of 1711. But the location of this land on Broad creek answers precisely to the scite of the town of the Cuscarawaocks, as laid down by Smith on the Cuscarawaock river, evidently the same river as the present Nanticoke. How came the Nanticokes, therefore, in possession of the ancient town of the Cuscarawaocks? This can be accounted for at this day only by supposing, that the *Nantiquacks* and *Cuscarawaocks*, of Smith, were one and the same tribe or nation, a branch of the Lenape, but, according to Heckewelder, "divided into separate bodies and distinguished by different names." When, therefore, the *Nantiquacks*, on the north bank of the Nanticoke, came to be "crowded upon" by the white people, part of them removed and incorporated themselves with their brethren, the Cuscarawaocks. It may be proper to observe here, that these lands on Broad creek, thus appropriated to the Nanticokes by the before mentioned act of 1711, ch. 1, were then supposed to lie in Somerset county, in Maryland, but when the province-line, between Maryland and the three lower counties on Delaware, came to be settled, as it was about the year 1762, these lands fell into what is now the Delaware State; which affords a probable reason, why we see nothing more on our provincial records of the Nanticokes settled on Broad creek. Further causes of the migration of the Nanticokes from Maryland appear in the act of assembly of 1721, ch. 12, entitled, "An act to empower his Honour the Governor, (for the time being,) to appoint any person or persons whatsoever, to resurvey the *Indians'* lands, and ascertain the bounds thereof." The preamble thereof states,— "Whereas complaint has been made by the *Choptank* and *Nanticoke* Indians, to this General Assembly, of some encroachments made upon the *Indians'* lands." In pursuance of the enacting clause of which act, commissioners were appointed, who resurveyed the said lands, and their resurvey was confirmed by the subsequent act of 1723, ch. 18, as being agreeable to the original grant to the Nanticokes, by the before mentioned act of 1698, of their land on the north bank of the Nanticoke, the scite of which corresponded, as before mentioned, with the scite of the *Nantiquacks*, as located by Smith on his map.

There is no doubt, however, that, although the legislature of the Province had thus endeavoured, by the preceding laws, to secure to the Indians the quiet enjoyment of the possessions and property assigned to them, many injuries to them and encroach-

SEC. VII. ments upon their property still continued to be done beyond the reach of those entrusted with the administration of justice, partly through the ignorance of the complainants or parties grieved, and perhaps in some measure from the indifference and inattention of the officers of justice to their duties in this respect. Discontents, arising from these injuries from the whites, were doubtless also, considerably excited and exaggerated by frequent conferences, which the Nanticokes must have held with their "grandfather" the Lenape, and with their patrons and friends, the Mengwe and Iroquois, on their interchange of visits with each other. In these consultations, we may be assured, keen resentments were often expressed of the gross violation of all human justice done to them by the whites in robbing them of their country; in which sensations the Lenape or Delawares, now retreating in like manner from their territories, could feelingly sympathise. It is possible also, that the French of Canada, about the time of the commencement of the war of 1744, might have secretly fomented these discontents, especially with the Lenape or Delawares, who subsequently within a few years openly joined them in the war against these colonies. The commencement of the migration of the Nanticokes from Maryland in the year 1748, as recognised by Heckewelder, is thus easily accounted for. The well known continuance of this policy of the French, on the commencement of the war of 1754, especially in alienating the affections of the Lenape or Delawares from the family of the Penns and their people of Pennsylvania, completed the rivetted enmity of the Lenape, who would naturally draw in with them their children—the Nanticokes. During this last mentioned war we therefore find, that the Provincial legislature of Maryland were under some necessity, not only of paying a little more attention to the injuries done to the Indians of the Province, particularly the Nanticokes, but also of taking measures to guard against any of their secret plots and conspiracies, or at least of preventing them from acting as spies or carrying intelligence to the enemy. They, therefore, at the session of assembly held in May, 1756, (a period of great alarm to this Province,) passed first a law, entitled, "an act for quieting the differences that have arisen and may hereafter arise between the inhabitants of this Province and the several *Indian* nations, and for punishing trespasses committed on their lands:"—by which a more effectual remedy against such abuses was deemed to have

been thereby provided. Another act also, apparently of more SEC. VII. importance, was passed at the same session, entitled, "an act for preventing *Indians* disaffected to the British interest in *America*, from coming into this Province as spies, or on any other evil design." The Nanticokes were the principal objects of this law; as appears from the preamble thereof, as follows:—"Whereas it is represented to this general assembly, that *Indians*, not in friendship or alliance with his majesty's subjects, and especially some of those *Nanticoke Indians*, who some years ago left their usual place of residence, and went to the westward, have lately fixed cabbins, under pretence of hunting, in different places of this Province, where they have behaved very insolently, and have even intimated, that they have been active in some of the horrid cruelties committed last summer by the savages on the frontiers of the neighbouring Provinces; and it is apprehended, that no strange *Indian* would, at this time of open war, come into this Province, unless with a view to get information, and give intelligence to our enemies, or on some other ill design: In order therefore, to discover any such, who may be lurking about hereafter, be it enacted," &c. The substance of the enacting clauses was,—that constables of hundreds, wherein any *Indian* town lay, should take an account annually of the *Indians* thereto belonging; and the chief *Indian* of such town refusing to give such account, might be taken into custody, and committed to prison. Also, that *Indians* travelling from their towns (within the Province) should take out passes; and, if discovered without a pass, at ten miles distance from their respective towns, might be seized and committed. To which a *proviso* was annexed, that this act should not hinder any *Indian* belonging to any of the *Six Nations* from travelling, &c. as an ambassador to the governor of this Province.

Although the *preamble* of this act states, that the Nanticokes, when they migrated from the eastern shore of Maryland, "went to the westward," yet this may be reconciled with Heckewelder's statement of their first settling at Wyoming in Pennsylvania, in sight of the Shawanese towns, on the eastern branch of the Susquehanah. Their first settlement there, (at Wyoming,) being prior to the war, the incidents, recognized by the last cited act of 1756, might have occurred subsequently to their first settlement there. "They," (the Nanticokes,) as Heckewelder states, "together with the Shawanese, endeavoured to remove

SEC. VII. the Christian Indians from Northampton county to Wyoming, their private object being to have a full opportunity to murder the white inhabitants in the war, which they already knew would soon break out between the French and English." But the Shawanese were then, prior to the war, "drawing off by degrees to the Ohio," as Heckewelder states in another place; "so that," as he says, "at the commencement of the French war in 1755, they had all, except a few families, retired to the Ohio, where they joined their countrymen (previously settled there) in the war against the English."—This seems to elucidate and explain the conduct of the Nanticokes alluded to in the last cited act of assembly of Maryland; so that it appears, they joined their neighbours—the Shawanese, some of whom were then settled "to the westward" on the Ohio, in "the horrid cruelties committed in the summer of 1755, on the frontiers of the neighbouring Provinces," to wit, Pennsylvania and Virginia.

Those of the Nanticokes, who had migrated from Maryland previous to the war of 1756, and settled at Wyoming, thus associating themselves with the Shawanese and Delawares, who had during the whole of that war been the steadfast friends of the French, appear to have retired with those Shawanese and Delawares towards the Ohio after the treaty of peace in 1763. But those of the Nanticokes, who had, as Heckewelder mentions, settled at Chenango, in the State of New York, in the neighbourhood of the Iroquois or Six Nations, most probably continued in either a friendly or neutral state towards the British colonies, as the Six Nations did. With these latter Nanticokes, it appears, the remnant of the Nanticoke tribe, then still remaining on the Nanticoke and Broad-creek, in Maryland, kept up a communication in their respective counties; and, within a few years after the peace of 1763, on a mature consultation in those councils, it seems to have been the joint and final resolution of the whole of the tribe, that their remnant in Maryland should entirely remove from their ancient seats on the Nanticoke and Broad-creek, and "live with their brethren" under the shelter of the Iroquois. This receives confirmation from an act of assembly of Maryland, passed in the year 1768, entitled "an act for granting to the Nanticoke Indians a compensation for the lands therein mentioned;"—the preamble of which states;—"Whereas the greatest part of the tribe of the Nanticoke Indians have, some years ago, left and deserted the lands in this Province, appropri-

ated by former acts of assembly for their use, so long as they should occupy the same; and the few that remain have, by their petition to this general assembly, prayed that they might have liberty to dispose of their right to the said lands, or that some compensation should be made them for quitting claim thereto, as they are desirous of totally leaving this Province, and going to live with their brethren, who have incorporated themselves with the Six Nations; and that they have given a power of attorney to a certain Amos Ogden, to dispose of the said lands for them, and to execute a release and acquittance therefor, which power appears to be confirmed and approved by Sir William Johnson, his majesty's superintendant of Indian affairs for the northern department; and whereas the said Amos Ogden hath, in behalf of the said Indians, offered to take the sum of \$666 $\frac{2}{3}$ dollars, for a release of right, and full acquittal of claim of the said Nanticoke Indians to the said lands on the Nanticoke and Broad-creek, be it enacted," &c. The commissioners, for emitting bills of credit, were thereby directed and required to pay to the said Amos Ogden, for the use of the said Nanticoke Indians, the said \$666 $\frac{2}{3}$ dollars, in full satisfaction for the said tribe of Nanticoke Indians, their claim to the said lands, and to take his receipt for the same. On the completion of this transaction, it would appear, that every individual of the tribe or nation bid adieu for ever to their ancient abode on the Nanticoke.

No further account of any other material incidents of this voyage has reached us. They returned to James town on the seventh of September, having their boat loaded with corn. From this excursion Smith is said to have drawn a map of Chesapeake bay, and of the rivers thereof, annexing to it a description of the countries bordering thereon, and the nations or tribes inhabiting them, which he sent to the council in England, and which is said to have been done with admirable exactness,* as we have before had occasion to mention. His superior abilities having obtained the ascendancy over envy and faction, he now entered on his office of president.

About this time Newport arrived with an additional supply of inhabitants, and with fresh "instructions" from the London company. The tenor of these "instructions" demonstrates, that those who were engaged in the colonization of America at this time in England, were actuated more by the alluring pros-

The tenor of some instructions from England to Virginia.

* Burk's Hist. of Virginia, vol. 1, p. 127.

SEC. VII. 1608. pects of a sudden acquisition of wealth, than the future benefits arising from colonies. The president and council of the colony were required to explore the western country, in order to procure certain intelligence of a passage to the South Sea; to transmit, as a token of success in the discovery of mines, a lump of gold; and to find some of the lost company sent out by Raleigh to Roanoke. And they threatened in a letter to Smith, that unless the charge of Newport's voyage, amounting to about two thousand pounds, was defrayed by the ship's return, they should be deserted, and left to remain there as banished men. A reader of humanity could scarcely give credit to this fact, did he not find it recorded by a creditable historian.* Thus far, then, we have not yet found, that either religious persecution or political oppression, or even the glory of propagating the christian faith, however much talked of, were really and truly the prime and original motives to English colonization.

An attempt of the Plymouth company to settle a colony in Maine.

A feeble attempt made in this and the preceding year by the North Virginia or Plymouth company, to plant a colony in that part of North America now called the District of Maine, deserves some notice. In 1607 Sir John Popham, then lord chief justice of England, and others concerned in the Plymouth company, sent out two ships with a colony, under the government of George Popham, his brother, attended with Raleigh Gilbert, nephew of Sir Walter Raleigh, second in command. They sailed from Plymouth on the last of May, 1607, and on the 11th of August landed on a small island, since called Parker's island, at the mouth of Sagadahoc or Kennebec river. Here they built a store-house and fortified it, and gave it the name of fort St. George. On the fifth of December the two ships sailed for England, leaving a little colony of forty-five persons. During the winter which was said to have been very severe, the governor or commander-in-chief, George Popham, died. They had the misfortune of losing all their stores by fire; so that when the ships arrived the next year, 1608, bringing with them the disagreeable intelligence of the death of Sir John Popham and Sir John Gilbert, in England, the great patrons of the colony, they were so dispirited that they unanimously resolved to return with the ships to England, which they did. All the fruit of this expedition was the building of a barn, which was found to

* Burk's Hist. of Virginia, vol. 1, p. 127, 148, and Holmes's Annals, vol. 1, p. 162.

be of use to the succeeding colonists, who planted there some years afterwards.*

SEC. VII.

1609.

In the succeeding year, an important change took place in the London or South Virginia Company. Whatever their motives might have been, it seems that the members of that company thought it proper to petition the king for a new organization of their body. Some have attributed this to that supreme direction of all the company's operations, which the king, by the former charter, had reserved to himself, and which discouraged persons of rank or property from becoming members of a society so dependent on the arbitrary will of the crown.† Others have supposed that the distractions and divisions which had prevailed in the council in the colony, having created much mismanagement in their affairs, the company in England were on that account induced to request an alteration in their charter.‡ While others again have attributed the desire of a change therein to their inordinate thirst for a sudden accumulation of wealth; § which conjecture seems to be too much strengthened by the tenor of their last instructions sent to the colony by Newport. The most probable motives, however, arose from a combination of the two last mentioned causes; and, as a late writer upon it observes—disappointed in their sanguine expectations of a rich and immediate profit, they were willing enough to believe the representations of the discontented and envious, rather than suppose that they themselves were mistaken in their calculations. || The king yielded to their request, and granted what is commonly called the *second charter of Virginia*, bearing date the 23d of May, 7 Jac. 1, (A. D. 1609.)¶ By this the administration of the affairs of the colony was vested in a single person, under the denomination of a governor, who was to reside in the colony, and to act according to the orders, laws, and in-

The second charter of Virginia, and the causes of granting it.

* Hutchinson's History of Massachusetts, vol. 1, p. 10. Holmes's Annals, vol. 1, p. 160, 162.

† Robertson's Hist. of America, vol. 4, p. 192.

‡ Oldmixon's British Empire in America, vol. 1, p. 225. Harris's Voyages, vol. 2, p. 225. Mod. Univ. Hist. vol. 39, p. 243.

§ Holmes's Annals, vol. 1, p. 164. Marshall's Life of Washington, vol. 1, p. 42.

|| Burk's Hist. of Virginia, vol. 1, p. 143. Chalmers (in his Annals, ch. 2, p. 24,) assigns another probable reason for their application for a new charter. "Partly in order to augment the number of the adventurers by the addition of persons of the greatest consequence in the nation, but more to explain former and to acquire new privileges."

¶ See this charter at large in Hazard's Collections, vol. 1, p. 53.

SEC. VII. structions of a council resident in England. The principal
1609. clause in this charter which has any immediate relation to what is now the state of Maryland, is that which designated the extent of territory thereby granted. The king granted and confirmed to the company, "all those lands, countries, and territories, situate, lying, and being in that part of America called Virginia, from the point of land called Cape or *Point Comfort* all along the sea coast to the northward, two hundred miles, and from the said point of Cape Comfort all along the sea coast to the southward, two hundred miles, and all that space and circuit of land lying from the sea coast of the precinct aforesaid up into the land throughout from sea to sea, west and north-west, and also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid." This was certainly a great enlargement of their territories beyond what was expressed in their first or former charter; which seemed to have confined them to fifty miles of English statute measure, northward and southward, along the coast of America from the *first seat* of their plantation and habitation, which was James town, and only one hundred miles back into the country from the sea-coast. But the country granted by this second charter, included nearly one-third of the present United States. The extent of it "from sea to sea," that is, from the Atlantic to the Pacific ocean, would have been absurd, could it be supposed that they were then acquainted with the real distance between those seas across the continent of North America, in the latitude of Point Comfort. But it would seem, from the tenor of their last instructions to the president and council, sent out by Newport, before referred to, that they were at that time strongly possessed with the idea, either that a passage to the south sea westward, through some inlet, would soon be discovered, or that the distance to that ocean across the continent was but very short, compared with what it has been since found out to be. Into this mistake they seem to have been led, not only by the previous discoveries of the Spaniards at the narrow isthmus of Darien, but also by some accounts given by the Indians to captain Smith, when he was exploring the Chesapeake, of great waters lying to the westward, not far distant; obviously meaning the lakes, and not the Pacific ocean.* Another observation on this

* Marshall's Life of Washington, vol. 1, p. 40. It is worthy of notice, however, that Powhatan told Smith that all the accounts he had received "of salt waters beyond the mountains," were false. Burk's Hist. of Virginia, vol. 1, p. 129.

charter occurs, in relation to the subsequent grant by Charles I. SEC. VII.
1609.
to Lord Baltimore, which at first was so loudly complained of as unjustly lopping off so much of the territories of Virginia. The absurd aspect of the extent of territory granted by this second charter of Virginia, left this solitary question only—how and where its excrescencies should be pared off? That it was too large for any kingdom or commonwealth upon earth, admitted of no doubt.

The last and concluding clause in this charter seems also to claim some notice, as it manifests the temper of those times in relation to religious controversies, and indicates those causes which eventuated in about twenty years afterwards, in the settlement of a colony of English catholics in Maryland. “And lastly, because the principal effect which we can desire or expect of this action is the conversion and reduction of the people in those parts unto the true worship of God and christian religion,* in which respect we shall be loath that any person should be permitted to pass, that we suspected to affect the superstitions of the church of Rome, we do hereby declare, that it is our will and pleasure that none be permitted to pass in any voyage, from time to time, to be made into the said country, but such as first shall have taken the *oath of supremacy*; for which purpose we do by these presents give full power and authority to the treasurer for the time being, and any three of the council to tender and exhibit the said oath to all such persons as shall at any time be sent and employed in the same voyage.”†

The Dutch nation, notwithstanding their constant war with Spain for many years for their independence, which about this time was acknowledged by all except their ancient masters, The settle-
ment of the
Dutch at
New York.

* This cant pervades all the early charters of North America, both French and English. As the emperor Powhatan was well known to entertain a most inveterate hatred to the Anglo-Virginians, on account of their invasion of his territories, his sentiments on the above clause, could he have read it, would very probably have been similar to those of the Indian cazique of Cuba; to whom, when fastened to the stake to be burnt, a Franciscan friar, labouring to convert him, promised immediate admittance into the joys of heaven, if he would embrace the *christian faith*. “Are there any Spaniards,” says he, after some pause, “in that region of bliss which you describe?” “Yes,” replied the monk, “but only such as are worthy and good.” “The best of them,” returned the indignant cazique, “have neither worth nor goodness; I will not go to a place where I may meet with one of that accursed race!”

† This clause will be animadverted upon more at large in a subsequent part of this work.

SEC. VII. had now attained to a considerable extent of trade in the East Indies; insomuch that the state's general had, in 1602, thought it proper to erect what is styled by historians, the Dutch East India Company. The great length of the passage to the East Indies by the Cape of Good Hope being productive of many inconveniences, the company became anxious, as indeed all the rest of Europe had long been, to explore some more convenient route thereto. With this view they employed captain Henry Hudson, an English navigator of considerable experience, and who had been engaged in the English service in the two preceding years on two similar expeditions, to find out a shorter passage to the East Indies.* Being furnished by the company with a vessel equipped with all necessaries, and with twenty men, English and Dutch, he sailed from the Texel about the beginning of April, in the year 1609. He at first pursued the same course which he had done in his two former voyages, nearly north along the coast of Norway and Lapland, until as the journal† expresses it,—“they came to the height of *The North Cape of Finmarke*, and had sight of *Ward-house*,” the

* Some doubt has been expressed by different writers, as to the *authority* under which Hudson sailed in this his *third* voyage for a discovery of a passage to the Indies, the journal of it being silent on that subject. That the expedition was fitted out at his own expense and on his own account, is very improbable. His sailing from the *Texel*, a fact recognized by the journal, warrants the inference, that the voyage was either at the private instance and expense of some Dutch merchants at Amsterdam, or at that of the Dutch East India company, as above mentioned. That it was under the authority and at the expense of that company seems to be established by the following passage and citation in the *Mod. Univ. Hist.* vol. 10, p. 293, in the section where they treat of the proceedings of the Dutch East India company:—“Feeling some inconveniences from the great length of the voyage, they (the company) were still very desirous of finding some shorter passage to the Indies; in order to which *they contracted*, in the year 1609, with a famous English pilot, Henry Hudson, who promised them great things in that respect, but performed nothing more than attempting a passage first by the *north-east*, and then by the *north-west*, in *one voyage*, without success in either.” For this the authors of that work cite,—“*Avertissement à la tête de Recueil des Voyages de la Compagnie*, p. 40.” Supposing that this *fact* was recognized by the Dutch East India company, it takes away all doubt about the authority under which Hudson sailed. The citation from the *Biog. Britan.* art. Hudson, in *Holmes's Annals*, vol. 1, p. 167, confirms this.

† The *journal* of this voyage, as inserted in the “*Collections of the New York Historical Society*,” (vol. 1,) and extracted from *Purchas's Pilgrims*, is there stated to have been “written by *Robert Ivat*, of Lime-*House*,” who appears throughout the journal to have acted as *master's mate*, and who is recognized in that capacity in the journal of Hudson's preceding voyage, in the year 1608, from England. *Ivat* was, therefore, an Englishman, and his journal originally in the English language.

most northerly points of the Norwegian Lapland. Here, "after much trouble with fogges, sometimes, and more dangerous of ice," Hudson appears to have altered the destination of his voyage, which evidently was to have explored a route to Japan or China by Nova Zembla, along the northern coast of Russia, and through the straits, between Asia and America, since discovered by captain Cook to be impassable on account of ice. Pursuing their course back, they arrived on the thirtieth of May, at one of the Ferrs islands, which lies in about 62° north latitude, a little to the north-west of the Shetland islands of Scotland. Here they watered and repaired, and on the first of June sailed again, directing their course to the westward. After a series of "stormes," and losing their fore-mast, they found themselves, on the third of July, on the banks of Newfoundland, "among a great fleet of *Frenchmen*, which lay fishing on the banke." Apparently desirous of landing, in order to replace their mast, they kept their course westwardly within soundings, until the thirteenth of July, when they first "had sight of the land." On the eighteenth, they "went into a very good harbour," and there, according to the journal, "they went on shoare, and cut a fore-mast,—then at noone they came aboard againe, and found the height of the place to bee in 44 degrees 1 minute."* After remaining in this harbour about six days, having furnished themselves with a new mast, watered, and wantonly "drove the *salvages* from their houses, and took the spoyle of them," as their journal says, they, on the six and twentieth of July, "sat sayle and came to sea." They continued coasting the continent of North America without touching at any land, except for a few hours on the eastern banks of Cape Cod, until they arrived, on the eighteenth of August, at the capes of the Chesapeake. Without any apparent cause, either assigned on the journal or otherwise appearing, they set out to retrace their course back again along the continent; but being blown considerably off the land, as low as the latitude of 36°, they with some difficulty regained the mouth of the Chesapeake; from whence they departed again

* This harbour is stated by Doct. Miller, in his discourse before the Hist. Soc. of New York, (see their Collections, vol. 1, p. 30,) to have been "at or near the place where *Portland*, in the district of *Maine*, now stands." But if the journal be accurately printed, as to the figures—"44 degrees,"—the harbour of *Penobscot* would seem to correspond better with the latitude mentioned, and, apparently from maps, answers every other part of the description equally as well.

SEC. VII. on the twenty-seventh of August, and proceeded along the coast to the mouth of the Delaware. Not finding the entrance thereof with ease, or, as they say, "the bay being shoald," they held on their course towards the north until they came to *Sandy Hook*, within which they anchored on the third of September, in the latitude of "40 degrees 30 minutes," according to their journal. Curiosity, or some other reason unknown, induced the captain to ascend the river, which now bears his name, as high up, it is said, as Albany; and immediately on his return down, took his departure from the Hook, on the fourth of October, and after a short passage arrived "on the seventh day of November, in the year 1609, in the *range* of Dartmouth in England."

This voyage has been since rendered of more importance than it would otherwise have been deemed, on account of its having laid the foundation of the original Dutch colony at New York; and which, in process of time, materially affected the limits of the province of Maryland.

If Hudson, in this voyage, sailed under the authority and at the expense of the Dutch East India company, as it appears he did, all right of property in any lands or countries discovered by him, even supposing him to have been the *first* discoverer thereof, (of which he no where in America was,) would have immediately appertained to, and been vested in, his owners—the Dutch East India company. But it no where appears that they, as a company, ever availed themselves of, or claimed any right to such property; and it might be inferred, from their not employing him any longer, that they were rather dissatisfied with his voyage. Indeed, his sudden return from the North Cape of Lapland seems, in mercantile phraseology, to have been at least a *deviation* from the original destination of his voyage. All right to any lands or countries, supposed to be *first* discovered by him, thus clearly vesting in his owners, and not in himself, it is plain he himself could make no valid sale of them. The company might possibly have sold them to some individual merchants; but this would reduce the question again into an inquiry,—what right could the company, or even Hudson himself, have acquired by merely visiting a country or lands long before discovered by other navigators? If coasting along a continent was a discovery, Sebastian Cabot had done that before him; and if the entrance into a harbour or river was an act of

occupancy, Verazzini had anticipated him. The true state of SEC. VII.
1609. the question seems to be, that as the right acquired by *occupancy* in the process of colonization seems to be indefinite in its extent of territory, it remains to be decided under the reasonable usage of the law of nations, whether the settlement or *occupancy* of the country by the English in Virginia, in pursuance of the right of *first* discovery by Cabot, and under the first charter of Virginia, in 1606, comprehending the coast from 34° to 45° north latitude, was not sufficient to preclude the interloping subjects of other sovereigns or states, from intruding within their limits? Upon reasonable principles, therefore, it seems to be manifest that the Dutch could derive no sort of right or title to any part of the continent of America from either Hudson or his voyage. It is possible, however, that some individual and enterprising Dutch merchants might have purchased from him his journal and charts.* This corresponds with what historians state, that in the succeeding year, 1610, some merchants of Amsterdam sent ships to Hudson's river *to open a trade with the natives*;† but in what year, prior to 1613, they commenced settlements there, it does not clearly appear.

Although Sir Humphrey Gilbert, as before mentioned, had 1610. taken formal possession, in her majesty's name, of the island of English attempt to settle Newfound- Newfoundland, yet hitherto no settlements had been made thereon; which probably may be attributed to the coldness of the climate and the barrenness of the soil. However, Mr. John Guy, a merchant, and afterwards mayor of Bristol, who, in the year 1609, wrote a treatise to encourage persons to undertake a settlement there, by his writing and solicitation, succeeded so well, that in the following year king James made a grant, dated April the 27th, 1610, to Henry Howard, Earl of Northampton, lord keeper, Sir Lawrence Tanfield, lord chief baron, Sir John Dodderidge, king's sergeant, Sir Francis Bacon, then solicitor general, afterwards lord chancellor, and created lord Verulam, together with the abovementioned Mr. John Guy, divers other merchants of Bristol, and other persons therein mentioned, by

* This fact is stated in Proud's Hist. of Pennsylvania, vol. 1, p. 109, 110, which in some measure accounts for the publication by Purchas, of the journal of Hudson's third voyage as drawn up by *Ivat*, the mate; Hudson's own journal being probably in the possession of the Dutch.

† It is thus stated in *Charlevoix* Nouv. Franc. vol. 1, p. 142.—“Des l'annee suivante quelques Marchands d'Amsterdam envoyerent des navires dans cette Riviere (Hudson's) pour y faire la traite.” See this quotation in Holmes's Annals, vol. 1, p. 167.

SEC. VII. the name of the Treasurer and Company of Adventurers and
 1610. Planters of the cities of London and Bristol, for the colony or
 plantation in Newfoundland; from north latitude forty-six to
 fifty-two degrees, together with the seas and islands lying with-
 in ten leagues of the coast. The proprietors soon after, in the
 same year, sent the before mentioned Mr. Guy, as conductor
 and governor of a colony of thirty-nine persons, who accompa-
 nied him to Newfoundland, and began a settlement at Concep-
 tion bay.* It appears, that this attempt to form a settlement
 there, did not succeed; and we are told, that Mr. Guy returned
 to England again, after residing there for two years, with little
 advantage. A part of his colony, if not the whole of them, re-
 turned with him.†

As the shipwreck of Sir Thomas Gates and Sir George Somers, on the Bermuda islands, in their voyage to Virginia, in the year 1609, had made the colonists acquainted with the produce, pleasantness, and beauty of those islands, whose accounts thereof reached the company in England, they were induced to apply to the king, to obtain an enlargement of their territories, so as to include these islands. Considerable deficiencies, as to their necessary powers in conducting the affairs of the Virginia colony under their then existing charter, appearing to them to require remedy, afforded additional inducement to them to apply for supplemental authority, whereby they might be enabled to remedy existing abuses, not only in the government of the colony, but in procuring the means of defraying the charges and expenses of supporting it. They accordingly obtained from the king a new patent, called by some writers the third charter of
 1612. Virginia, bearing date March 12th, 9 Jac. 1, (1611-12.) By
 The third charter of Virginia. this the king gave, granted, and confirmed "to the treasurer and company of adventurers and planters of the city of London, for the first colony in Virginia, and to their heirs and successors forever, all and singular those islands whatsoever, situate and being in any part of the ocean, seas bordering upon the coast of our said first colony of Virginia, and being within 300 leagues of any of the parts heretofore granted to the said treasurer and company, in our said former letters patent as aforesaid, and being within or between the one-and-fortieth and thirtieth

* Holmes's Annals, vol. 1, p. 172.

† Oldmixon's British Empire in America, vol. 1, p. 3. Mod. Univ. Hist. vol. 39, p. 249. Also, see note (I) at the end of this volume.

degrees of northerly latitude.” They were authorized also, to SEC. VII.
 hold four great and general courts, at the four usual feasts in the 1612.
 year; and therein to elect and choose members of the council in
 England, for the said colony, and to nominate and appoint offi-
 cers, and to make laws and ordinances for the good and welfare
 of the said plantation. Besides other incidental powers, appa-
 rently necessary, they authorized the company to establish lotte-
 ries, in order to raise money for their necessary expenditures.*
 It appears, however, from the whole purview of this instrument,
 that it was intended, not as an abrogation, but as a *deed of con-*
firmation of their former charter. Their territories, therefore,
 were not abridged by it in their enormous extent, but on the
 sea-board were considerably enlarged. In order to derive their
 promised utility from the Bermudas, it was not thought neces-
 sary, it seems, for them to retain those islands, as a part of their
 territories, for they immediately sold them to another company,
 who thereupon sent out a colony to settle them.

The French and Dutch, now making some progress in their
 settlements on the North American continent; the former in
 Acadie, now called Nova Scotia, and in that part of the United
 States called the District of Maine; the latter in the State of
 New York: Sir Thomas Dale, the governor of Virginia, in vir-
 tue of the claim of the English to the whole northern part of
 America, by reason of Cabot's prior discovery of it, sent an arm-
 ed expedition in the year 1613, under captain Samuel Argall, to 1613.
 break up and destroy those settlements. He did so as to those
 of the French; but, as he left no garrison to keep possession of
 the places where they had settled, they soon afterwards resumed
 their former stations. On his return to Virginia, he visited the
 Dutch settlement on the Hudson; and, on his demanding the
 possession thereof, the Dutch governor, Hendrick Christizens,
 incapable of resistance, peaceably submitted himself and his colo-
 ny to the king of England, and, under him, to the governor of
 Virginia, consenting to pay a tribute. But in the next year, a
 new governor from Amsterdam arriving, with a reinforcement,
 asserted the right of Holland to the country; refused the tribute
 and acknowledgment stipulated with the English by his prede-
 cessor, and put himself into a posture of defence. He built a
 fort on the south end of the island Manhattan, where the city of
 New York now stands, and held the country many years, under

Captain
 Argall's
 expedition
 to break up
 the French
 and Dutch
 settlements
 in Nova
 Scotia and
 New York.

* See the charter at large, in Hazard's Collections, vol. 1, p. 72.

SEC. VII. a grant from the States General, by the name of the New Netherlands.*
1614.

It would be improper to pass over, altogether without notice, the voyage and discoveries made, at this period of time, by captain John Smith, the celebrated founder of Virginia, often before mentioned, in that part of North America subsequently denominated *New England*. It has been before observed, that the superior quality of peltry or fur in all northern climates had given to the northern parts of America much stronger attractions to such Europeans as sought merely the emoluments of traffick in their voyages across the Atlantic, than to those parts which now form the southern states of America. These, indeed, when the hand of agriculture should be applied to them, were capable of rendering the more substantial necessities of life in much greater abundance. But commerce always demands immediate profit, and cannot wait for the slow progress of arts and civilization. The whole country was a forest, and agriculture required patience. Hence Canada was amongst the earliest colonies of North America. The fishery on the banks of Newfoundland also presented a still more enticing object. While it produced almost incalculable profits to the enterprizing merchants, it gave nourishment to the strength of a maritime nation. These considerations were, without doubt, obvious to the strong energetic mind of such a man as Smith. We therefore find him in this year, 1614, in the employment of some English merchants, who had sent him to that part of the American continent then called North Virginia, with two ships under his command, for the triple purpose of fishing on the coast, of searching for mines of gold and copper, and for trafficking with the natives for furs. Leaving the Downs on the third of March, he arrived on the last of April at the island of Monchigon in latitude forty-three degrees four minutes. After building some fishing-boats, he, in one of them, with eight men, while the rest were employed in fishing, ranged the coast from Penobscot to Cape Cod, and bartered with the natives for beaver and other furs. He got for trifles near eleven thousand beaver-skins, one hundred martins, and as many others, within the distance of twenty leagues. With these furs, train-oil, and cod-fish, he returned to England, without forming any settlement in the country, having made his voyage out and

* Holmes's Annals, vol. 1, p. 162, 179. Marshall's Life of Washington, vol. 1, p. 57.

home in about six months, and acquired about £1500 sterling for his principals in the commodities he brought to them. From the observations made by him on this coast during his voyage, he formed a map of it, and presented it to Prince Charles, the same who was afterwards king Charles the first. The Prince appears to have derived some amusement from changing the old Indian names of places into those familiar in England, so as to justify the denomination, which, either he or Smith, or both conjointly, thought it proper to affix to the country, calling it *New England*. In the succeeding year, 1615, this enterprising man was fitted out again with two vessels, and a small colony "of sixteen men" only, to make a settlement there; but he was so unfortunate as to be captured by pirates, and his plausible schemes proved abortive.* His preceding and subsequent account thereof appears, however, to have contributed much to raise the reputation of the country, and to induce adventurers thither for fishery and traffick; but none for settlement; until accident, in the year 1620, caused a colony to settle within its limits; the causes of which we now proceed to develope in the following section.

SEC. VII.
1614.

* Smith's Hist. Vig. vol. ii. p. 175, 205, edit. 5, of 1819.

SECTION VIII.

Reasons for the following digression—Rise of the reformation—Its progress through the continent of Europe—Its introduction into England—The origin of the Puritans—Divisions among the Puritans—State of religious parties in England, on James I's accession—The independents emigrate to Holland—Their distressing situation there—They form the design of removing to America—Negociate with the Virginia Company for that purpose—Dissensions in the Virginia Company occasion delay—They embark for America, and settle at Plymouth, in Massachusetts.

SECT. VIII.

Reasons
for the fol-
lowing di-
gression.

It is a common remark throughout the United States of America, that most of these states were originally colonized by means of religious persecution, which the first settlers of them experienced in their mother country; and the provinces of New England, Maryland, and Pennsylvania, are generally cited as instances thereof. But when we recur to the records of history, at the period of time when the colonies of New England and Maryland were first settled,* and find that the mother country was then a scene of the most tumultuous contest between three principal sects of the christian religion, the established church of England, the Roman Catholics, and the Puritans,† a contest, not indeed for the *supreme power* merely, but each for its own *existence*; and find also, that at the close of the scene the established church gave many instances of her moderation, not exhibited by either of the others when in power, we are compelled, if not entirely to excuse, at least to make much allowance for her conduct in the causes of those first emigrations. The reign of queen Mary abundantly demonstrated that the English Roman Catholics would tolerate neither the church of England nor the Puritans. And the conduct of the Puritans, in their turn, at the helm of power, will equally convince us, that neither church

* The colony of Virginia, the only English colony prior to those last above mentioned, unquestionably originated from the Spanish views of gold and silver mines, as well as from a desire to find out a short passage to the East Indies, and not from religious motives.

† The appellation of "Puritans," included, during Elizabeth's reign, the *Presbyterians*, as well as the *Brownists*, the latter of whom were afterwards called *Independents*.

nor Catholics were to expect toleration from them.* Nay indeed, these Puritans, when at the height of their power, and the sceptre of England was wielded by the hypocritical Cromwell, had their agents of persecution, even in the infant colony of Maryland. Among the "Acts and orders of a general assembly, holden at Patuxent (Maryland) the 20th of October, 1654, by commission from his highness the lord protector," &c. is an act, entitled, "An Act concerning religion," whereby, "it was enacted and declared, That none, who professed and exercised the *Popish* (commonly called the Roman Catholic) religion, *could be protected in this province*, by the laws of England, formerly established, and yet unrepealed : nor by the government of the commonwealth of England, &c. but to be restrained from the exercise thereof, &c. That such as profess faith in God by Jesus Christ, though differing in judgment from the doctrine, worship, or discipline publicly held forth,† should not be restrained from, but protected in, the profession of the faith and exercise of their religion ; so as they abused not this liberty, to the injury of others, disturbance of the peace, &c. *Provided* such liberty was not extended to *popery* or *prelacy*, nor to such, as under the profession of Christ, held forth and practised *licentiousness*."‡ The reader will easily see through the flimsy veil of this insidious proviso. As prelacy is synonymous to *episcopacy*, and the church of England could not exist without the government of its *bishops*, it is very fairly to be supposed, that it was meant thereby to exclude that church also, as well as the Catholics, from the exercise of their religion in this province. But be that as it may, the crime of "licentiousness" was certainly so indefinite as to leave ample occasion for unlimited persecution ; and a slight perusal of the early part of the history of Massachusetts, will furnish numerous instances of the wild judicial constructions put by these fanatics on similar legislative expressions.

Thus then, as the causes of the colonization of New England and Maryland, which are nearly coeval, appear not to be clearly

* By an ordinance of the 23d of August, 1645, imprisonment for a year, on the third offence, and pecuniary penalties on the former two, were inflicted, in case of using the Book of Common Prayer, not only in a place of public worship, but also in any private family. See 4 *Pl. Com.* 53.

† This meant, without doubt, the doctrine and discipline of the *Independents*, forming at that time in England, under Oliver, what might be called, the established religion or church.

‡ See Bacon's edition of the Laws of Maryland, 1654, ch. 4.

SECT.
VIII.

understood, in the United States, or if so, not generally acknowledged, it is here hoped, that it will afford some apology for leading the reader, in a very cursory manner, through the scenes of religious transactions in England, attending the progress of the reformation, and the consequent struggle, between the three great religious sects before mentioned, for that earthly political crown, which was to bring the others as humble vassals at the victor's feet.

1517.

Rise of the
reforma-
tion.

When Pope Leo X. in the beginning of the sixteenth century, by his profuse liberality in the patronage and encouragement of the arts and sciences, in the collection and publication of valuable and scarce books, and also in the completion of that superb edifice at Rome, St. Peter's church, but more especially by his inordinate ambition to aggrandize his family, the house of Medici, of Florence, had exhausted the revenues of the church, he was constrained to adopt such devices as suggested themselves to him, to replenish the coffers of the holy see. As the christian religion, in its then organized state, acknowledged, and in the consent of a large majority of that religion* still acknowledges the papal power, of granting a pardon and remission of all sins, Leo was naturally induced, through his philosophic and unbelieving mind, to yield to the superstition of his flock. He, therefore, in the year 1517, published all over Europe general *indulgences* in favour of such as would contribute sums of money for the building of St. Peter's church, and at the same time appointed two persons in each country to recommend those indulgences by preaching, and to receive the money for them. As religious indulgences are founded on the infinite treasure of the merits of Jesus, the holy virgin, and all the saints, which it is supposed Christ's vicar upon earth has a right of distributing, by virtue of the communion of saints, it must be allowed, that Leo fell upon a most apt, though not a novel mode, of recruiting the treasures of the apostolic chamber, of Rome. But an unfortunate incident in the mode of collecting this revenue, brought such a storm upon the church, as to shake the proud fabric to its basis. The person appointed by the pope for this purpose, in the northern part of Germany, particularly in Saxony, was Albert, archbishop of Magdeburg and Mentz.

* "Three-fourths of Europe consist at this moment (1805) of christians professing the Roman Catholic religion." Mr. Fox's speech in the house of commons, on the Catholic petition, May 13th, 1805.

That prelate, either by his own authority, or by order of the pope, bestowed the commission for distributing these indulgences on the order of *Dominican* friars, instead of that of the *Augustine* friars, as had been usual, and, as it seems, in consonance to the convention which had been made among the four orders of mendicants. This preference sorely vexed the Augustine friars, who considered the neglect as a contempt upon their order; perhaps also, at the same time regretting to see themselves frustrated of the share they might have had of the money. These indulgences certainly appear to the eye of reason, however long they may have been sanctioned by christian usage and practice, as totally repugnant to those moral principles, adopted by the common consent of all mankind, in all ages, as the best ligaments of human society.* In this point of view the Augustines did not omit to place them; and the Dominicans, by their indiscreet conduct in relation to them, gave their enemies ample room to exercise their envious and malignant passions. Offices were every where set up, even in taverns, where the collectors consumed in riot and debauchery a great part of the profits produced from this traffic of the sacred treasures of the church. John Stulpitz, or Staupitz, vicar general of the Augustines in Germany, being supported by the elector of Saxony, who had a particular regard for him, was the first who openly attacked the sermons of the Dominicans, and the abuses which were committed in the distribution of the indulgences. The better to promote his opposition, he selected for his colleague and assistant Martin Luther, a preacher of the same order of Augustine friars, and a doctor of Wittenberg, whose name has since been so well known in the world. As he was a man of an ardent, zealous, and enterprizing temper, and possessed considerable talents for both writing and eloquence, and remained safe also from the thunder of the Vatican, under the protection of the elector of Saxony, his doctrines soon gained numbers of proselytes throughout all Germany, and indeed set all Europe in a blaze of zeal for reforming the abuses of the church. In addition to this, it may be observed, that the minds of the people of Europe had been already, in some measure, prepared for the occasion, by that diffusion of ancient literature, particularly the Platonic philosophy, which resulted from the invention of printing. The combustible material had been collected. It only re-

SECT.
VIII.
1517.

* See note (K) at the end of the volume.

SECT.
VIII.

1517.

Its progress thro' the continent of Europe.

quired the intrepidity of such a man as Luther to apply the spark.—From such sources originated that great event so well known in history under the name of the reformation.*

1521.

1527.

Minor reformers soon sprung up in numbers, sketching out different schemes of reformation, in such different shades of opinion as best suited their fancy. In Switzerland, Zuinglius declared himself an advocate for the doctrine of Luther, and imitating his conduct, declaimed warmly against the person who was appointed to publish the indulgences in that country. Subsequently, however, differing in opinion from Luther, on the doctrine of the Eucharist, he became the founder of the sect in Switzerland called *Sacramentists*.† The *Anabaptists* also, in Germany, grew out of Luther's heresy; though he took pains to disown them, and to have them repressed. They boasted of immediate revelations to themselves, and taught that men ought to regulate their conduct by the visionary precepts which they supposed inspiration might dictate. They destroyed all the books that happened in their way, but the bible. They despised not only ecclesiastical but civil laws; and held that all government was noting but usurpation. They were for having all things in common, and for every man's being free and independent, and promised themselves a happy empire, in which they would reign alone, after having extirpated all the wicked. Encouraged by this doctrine, the peasants and boors throughout Germany rose up in arms, and threatened destruction to every government. In private life they were not less wild and dangerous. One of their leaders in Switzerland, in the presence of his father and mother, cut off his brother's head with a sword, assigning to them as a reason for it, that he was commanded by God to do so. Two of their principal leaders, natives of Holland, John Matthias, who had been a baker at Haerlem, and John Boccold, or Beukels, a journeyman taylor of Leyden, aided by their followers, took forcible possession of the city of Munster, in Westphalia. Matthias, assuming the power of a prophet, governed the city, until he was killed in a sally by the bishop of Munster's troops, who besieged it. He was succeeded by Boccold, who, in imitation of king David, danced naked through the streets, and caused himself to be crowned king of Sion. He ordered

* Du Pin's Hist. of the Church, Cent. xvi. ch. 6. Mod. Univ. Hist. vol. 29, p. 500.

† Du Pin's Hist. of the Church, Cent. xvi. ch. 7, 11.

his minor prophets to preach to the people, that it was one of the privileges granted by God to the saints, to have a plurality of wives. To set the example, he himself married three. As he was allured by beauty or the love of variety, he gradually added to the number of his wives, until they amounted to fourteen; nor was any private man allowed to remain with one only. As it was instant death to disobey this tyrant in any thing, one of his wives having uttered certain words that implied some doubt concerning his divine mission, he immediately called the whole number of them together, and commanding the blasphemer, as he called her, to kneel down, he cut off her head with his own hands; and so far were the rest from expressing any horror at this cruel deed, that they joined him in dancing, with a frantic joy, around the bleeding body of their companion.* It is but justice, however, to the modern Anabaptists to add, that these extravagant and fanatic notions have been long since relinquished by them.†

SECT.
VIII.
1527.

Next in order came the grand reformer of the reformed, John Calvin. He seems to have been more remarkable for his talents as a controversial writer, than as a preacher. As the heresies of the before mentioned reformers did not find a ready access into France, of which Calvin was a native, he was forced into a kind of voluntary exile to other countries, to propagate such doctrines as he might think convenient to propose. The glory of being the founder and head of a religious sect, is scarcely less intoxicating than that of being at the head of an empire. With a mind filled, without doubt, with this sort of ambition, he wandered to Geneva. As this city formed in itself a little independent republic, being but a few years before emancipated from the tyranny of the dukes of Savoy, and as the heresies of Luther and Zuinglius, by the preaching of William Farel, a French Protestant refugee, and other reformers, had gained so much ground in this city, that the *Gospellers*, as they were there called, had driven the catholic bishop out of the city, and seized both the ecclesiastical and temporal power into their own hands, it became the great asylum for all the French refugees, who were discontented with the established religion of their own country. Here John Calvin was persuaded by his friend Farel to fix his abode. Calvin was to write

1536.

* Robertson's Hist. of Charles V. book 5th, Du Pin's Hist. of the Church, Cent. xvi. ch. 8 and 10, Bayle's Hist. Dict. art. Anabaptists.

† See note (L) at the end of this volume.

SECT. and Farel was to preach, and thus they were jointly to defend
VIII. their possession of the temporal as well as ecclesiastical powers

1536. their little state. They soon found cause of disagreement with their friends and allies the Bernese, who were Lutherans. They abominated the practices of these Bernese Lutherans, in making use of unleavened bread in their sacrament, and of women being married with their hair dishevelled. The inhabitants of Geneva still retained also their fondness for other holydays besides Sundays; and their reformation in manners did not keep pace exactly with their reformation in doctrines. To punish these propensities to sin, Calvin and his coadjutor refused to administer the sacrament to them. The citizens enraged rose in a body, and drove them both out of the city. Calvin, however, soon contrived to raise a powerful faction in his favour, and in a year or two, (1541,) he was solicited to return. He returned, indeed, with redoubled influence and power. The first thing he did was to establish a form of discipline and a consistorial jurisdiction, with power to exercise canonical censures and punishments, even to excommunication. He shut up all taverns, prohibited all profane dancing and singing, and put a stop to all sports.
- 1541.

- In vain, did the more rational part of the citizens complain, that this was re-establishing the tyranny of the church of Rome. Calvin had the syndics on his side; and the contumacious were threatened with excommunication, if they did not submit. A member of the council, however, had the courage to impeach his doctrine as being unsound: but the magistrates, without further inquiry, committed him to prison, and condemned him to do penance for his accusation, by walking through the city with a torch in his hand; probably intimating thereby, that he deserved to be burnt as a heretic. One Bolsec, a physician who had denied Calvin's doctrine of predestination, and said that he made God the author of sin, was first imprisoned and then banished the city, under the penalty of being whipped if he ever returned there again.
- 1551.
1553. But the most impious abuse of the secular power, in matters of religion, happened in the case of the famous Michael Reves, commonly called Servetus, a Spaniard, and one of the most learned physicians of the age. He had been imprisoned for his opinions, at Vienna; but making his escape from thence he took refuge at Geneva. It was natural for him to hope for an asylum amongst a people who had founded their liberties upon their right

of thinking for themselves on religious subjects, and disclaiming authority in points of conscience: he was fatally deceived. On his arrival at Geneva, he was thrown into prison, and accused by Calvin of some heterodox opinions with regard to the Trinity, and other articles of faith. He was at the same time robbed by the magistrates of a gold chain, and a considerable sum of money, which never were returned to him; so that he was in great danger of perishing during his imprisonment, for want of the common necessities of life. Being called upon to make his defence, he did it with so much freedom and learning, that Calvin could oppose him with nothing but the secular power, which condemned him to be burnt alive. Servetus suffered this sentence without retracting his opinion, to the indelible infamy of all those who were concerned in it. As an explanatory supplement to the sentence against Servetus, may be added that which was given in, about two years afterwards, against Philibert Bertellier, who was a native of Geneva, and register there of one of the inferior courts of justice. He was first excommunicated by Calvin's consistory, and then a criminal sentence against him by the syndics and council, was publicly given and pronounced, accompanied with sound of trumpet: "That the said Philibert, *for the horrid and detestable crimes of conspiracy against the holy institution and christian reformation*, and against this city, and the public good and tranquillity thereof, be condemned to be bound and brought to the place of execution, there to have his head cut off, his body to be quartered, and his members to be set up in the four most eminent places round about this city, for an example to others, who shall commit *such crimes*." But having secretly fled out of the city, he was so fortunate as to escape the terrible punishment that awaited him. As Calvin, unquestionably, had the civil as well as the ecclesiastical power of Geneva under his direction, to him principally, may be attributed these dreadful persecutions. A little while before the death of this arch persecutor, two citizens were put to death for adultery: nor did these bloody deeds cease with his breath; his successors in his consistory, appear to have carefully copied his intolerant practices. A poor miserable maniac, in the succeeding century, professing himself a Jew, and perhaps, as his religion dictates, speaking contemptuously of Christ, was strangled and burnt. In short, the rack and the faggot became familiar modes

SECTION
VIII.

1553.

1555.

SECTION of punishment, as well for heresy as for treason, with the citizens and syndics of this petty republic.*

VIII.
1531.

Its introduction into England.

Amidst all this religious uproar throughout the continent of Europe, it was not to be expected that England would remain quiet; especially as there still subsisted in that kingdom considerable remains of the Wickliffites, commonly called Lollards, whose principles resembled those of Luther. But Henry VIII., among the most arbitrary tyrants that ever sat upon a throne, was at first more unusually strenuous against the reformation than any other monarch in Europe. He not only used his power to suppress its entrance into England, but turned author, and wrote a book against Luther and his doctrines, for which he received from Pope Leo the glorious title of *Defender of the Faith*. But what the fanatic zeal of the Lollards and the Lutherans could not effect, was soon produced by the youth, beauty, and charms of the accomplished Anne Boleyn. Finding that her virtue and modesty, prevented all hopes of gratifying his passion for her in any other manner than by marriage, Henry formed the resolution of being divorced from his then wife, Catherine of Arragon. Some scruples, which had been before that time, suggested about the propriety of marrying a brother's wife, as Catherine had been, afforded some plausible grounds for him to go upon. But as Pope Clement, who had succeeded Leo, was entirely under the awe and influence of the emperor Charles V. who opposed the divorce, on account of the honour and interests of queen Catherine, who was his aunt, Henry found more difficulty than he expected, in obtaining the formal consent of the holy pontiff to annul his marriage. His passions, always violent, not admitting of such delay, rather than wait such slow proceedings in untying the knot, he chose to cut it, by throwing off at once, all subjugation to the papal power. He caused his own clergy to try the validity of the marriage, and to annul it as unlawful, while at the same time, if not prior to it, he married Anna Boleyn. Meanwhile, the Lutheran doctrines had, as it were, stole into his dominions, and had gradually disposed his parliament and his subjects, so far to join in the reformation as to renounce all submission to the power and authority of the see of Rome. With this disposition of the nation, Henry in some

* See Robertson's Hist. of Charles V. b. 11. Mod. Univ. Hist. vol. 37, p. 292, 300. Bayle's Hist. and Crit. Dict. artic. Calvin, Bolsec, Bertellier. And note (M) at the end of this volume.

measure coincided, and connived at the introduction of the reformation into England. But, as the reformers on the continent had exhibited many symptoms of a republican spirit, especially in the furious insurrections of the Anabaptists in Germany, there was little probability, that so absolute a king would ever give favour or countenance to any doctrine, which lay under the imputation of encouraging sedition. Besides, this political jealousy having gained much honor, as he thought, in his polemical writings against Luther, and elated with the most lofty opinion of his own erudition, he received with impatience, mixed with contempt, any contradiction to his own religious sentiments. He seemed, therefore, to play together the two factions of Protestants and Catholics so as to suit his own purposes. The consequence was, that during his reign, few innovations on the doctrines of the ancient Catholic religion were allowed by him, except the renunciation of all papal authority in England, the dissolution of the monasteries and nunneries, and some little alteration in the mass-book.*

SECTION
VIII.
1531.

On the death of Henry, his crown descended to his son Edward VI. who was then a minor of about nine years old. As he was incapable at that age of exercising the powers of royalty, his father had endeavoured to provide for that incapacity by appointing persons to administer the affairs of the government until his arrival at age. But the relations of Edward, by his mother's side, particularly Edward Seymour, duke of Somerset, his uncle, contrived to set that appointment aside, and to have the wardship of young Edward, as well as the administration of the government, vested solely in him as lord protector. The duke was a zealous reformer, and consequently was careful that no other religious principles should be instilled into his nephew's mind, than those which he himself approved. The young king, therefore, as he grew up, manifested much zeal for the reformation. As the majority of men in most countries are apt to adopt those religious opinions to which preferment and profit are annexed, those early inclinations of young Edward had a powerful effect in converting the bulk of the nation to the modern heresies, especially among the courtiers, who with every probability, had now fairly calculated upon a total abolition of the ancient religion. The protector, therefore, aided by the zeal of young Edward, who, it is said, exhibited an uncommon under-

1547.

* Hume's Hist. of England, chap. 29, 30, 31, 32.

SECTION VIII. standing for so young a man, found but little difficulty in effecting his design of establishing a hierarchy in England, which should partake, in a moderate degree, of the doctrines of the reformers in the rest of Europe. In these schemes he usually had recourse to the counsels of Cramner, archbishop of Canterbury, who being a man of moderation and prudence, was averse to all violent changes, and advocated the mode of bringing over the people by insensible innovations, to that system of doctrines and discipline which he deemed the most pure and perfect. It is a feature of the reformation easily traced throughout its history, that whenever it prevailed over the opposition of the civil authority, it raged, like a torrent, disregarding any bounds. Such reformers, to show their detestation of the numerous and burthensome superstitions with which the Romish church was loaded, proscribed all rites, ceremonies, pomp, order, and exterior observances, as impediments to their spiritual contemplations, and obstructions to their immediate converse with heaven. But where it was introduced by the rulers of the government, as in England, the transition was more gradual; much of the ancient religion was still preserved; and a reasonable degree of subordination was retained in discipline, as well as some pomp, order, and ceremony in public worship. With this spirit, the English reformers proceeded; and by the aid of acts of parliament, during the short reign of Edward, completely established that hierarchy, denominated the Church of England, nearly in the same doctrines and form of worship in which it exists at this day.

1553. But, unfortunately for the English reformers, the life of Edward was but of short duration: he died in the year 1553, in the sixteenth year of his age. The crown descended to his sister Mary, who, notwithstanding all the earnest importunities of her brother, as well as of the reformed bishops, had still persisted in adhering to the ancient religion. Being educated by her mother, Catherine of Arragon, she had imbibed the strongest attachment to the Catholic communion, and the highest aversion to the new tenets. Naturally of a sour and obstinate temper, she was well fitted in mind to become a bigot; and her extreme ignorance rendered her utterly incapable of doubt in her own belief, or of indulgence to the opinion of others. It was not long, therefore, before she discovered her intentions of not only abolishing the newly established religion, but of persecuting its professors. The good old christian principle of "compelling men to come in, that

the house may be filled,"* not a little recommended by Luther in Germany,† and ardently adopted and enforced by Calvin in Geneva, was now as zealously revived in England by Mary. She disliked the tedious mode of punishing heretics by prescribing to them oaths and *declarations of belief*, and depriving them in that manner of all political as well as religious liberty, as modern protestants do in another quarter of the world, than either Europe, Asia, or Africa. She took the shorter method of roasting them alive; by which means the faithful got rid of them at once. The beneficial effects of this mode of christian compulsion were soon perceived, in the general return of the English nation to the good old way of thinking in religious matters; except indeed a few, who made their escape into Germany, Switzerland, and Geneva, and whom we shall presently see returning again from their foreign travels, much improved in their religious opinions, according to their own estimation.‡

SECTION
VIII.
1553.

The triumph of the Catholics, and the sufferings of the reformers in England, were not however destined to be long. The cruel reign of Mary was short, and as she died without issue, her crown descended to her sister Elizabeth, whose mother being of the reformed religion, she herself adopted it with as ardent zeal, as Mary had that of the Catholic. In this singular series of events the English nation had to turn round again, and to try, if the heretical coat, which Mary had lately obliged them to put off, would still fit them, and once more become fashionable among them. Elizabeth found little difficulty in making this reconversion of the nation. Although the Catholics had in the preceding reign, by the bigotry of Mary, obtained the reins of power completely into their own hands, and had apparently reduced the nation back to the communion of the Catholic church, yet it seems to be clearly established by the concurrent events of the times, that a majority of the people were attached to the reformed religion. The queen proceeded cautiously and grad-

1553.

* See the parable of the great supper, Luke xiv. 23.

† Luther allowed of persecution, as far as *banishment*; but Calvin thought it lawful to put heretics to death. Tindal's Cont. of Rapin's Hist. vol. 15, p. 274. See also an account of Luther's Persecution of his friend *Carlostadt*; Roscoe's Pontificate of Leo X. ch. 19.

‡ Leave was given to the celebrated Peter Martyr, and other reformers, who were foreigners, to quit the kingdom. Under this leave, many English, to the amount of a thousand, it is said, under pretence of being foreigners, withdrew from England. Rapin's Hist. of England, (Tindal's edit.) vol. 7, p. 117, and vol. 15, p. 276.

SECTION ually in the alteration, and, like her predecessor, availed herself
 VIII. of the authority of a parliament chosen to her own mind for that
 1558. purpose. By their sanction the obnoxious statutes of the former
 reign were repealed, and such re-enacted as were necessary to
 place the reformed Church of England nearly, if not precisely,
 in the same situation as her brother Edward had left it, and as
 we now see it. Prior to the session of parliament, however, and
 soon after her accession to the throne, she had deemed it re-
 quisite to discover such symptoms of her intentions, as might
 give encouragement to the protestants, so much depressed by the
 late violent persecutions. She therefore recalled all the exiles
 who had fled out of the kingdom, as before-mentioned, and or-
 dered all persons confined in prison on account of religion to be
 immediately discharged. As it is natural for those, who have
 been persecuted for their zeal in any particular object, to feel a
 more inveterate animosity to the usages and practices of those
 from whom they receive the persecution than they would other-
 wise have done, had their zeal been left to itself to spend its
 first fury, so the most zealous reformers in England, after Mary's
 reign, became more anxious to push the reformation to a much
 greater excess than it had been carried to in the reign of Ed-
 ward. The English exiles also, especially those who had resid-
 ed at Geneva, came back to England, full fraught with all the
 splenetic inveteracy of John Calvin, against the superstitions of
 the church of Rome. Added to this also, the reformation had
 commenced in Scotland, shortly after the accession of Eliza-
 beth, under the patronage of John Knox, who had just then ar-
 rived from Geneva, where he had passed some years in banish-
 ment, and where he had imbibed from his commerce with Cal-
 vin the highest fanaticism of the Calvinistic sect, augmented by
 the native ferocity of his own character. The contagion of that
 spirit, which dictated the outrages committed by Knox and his
 followers, in that neighbouring kingdom, could not be prevented
 from spreading itself also into England. The English exiles,
 thus impressed with Calvinistic principles, were not a little dis-
 appointed, on their return, in finding, that the reformed Church
 of England, as settled by Elizabeth, still retained so much of
 what they denominated the abominable idolatry of the Catholics.
 Being regarded with general veneration on account of their zeal
 and past sufferings, they were emboldened to insist, that the re-
 formation should be established on that model which they deem-

Origin of
 the Puri-
 tans.

ed most pure and perfect. The vestments of the priest, the sign of the cross in baptism, the use of the ring in marriage, with several other rites which long usage had accustomed the people to view with reverence, were deemed by the moderate English reformers, inoffensive observances, which they were willing to retain; but the fanatics rejected them with horror, as "badges of idolatry and the dregs of the Romish beast." Elizabeth herself, however, so far from being willing to strip the church of the few ornaments and ceremonies which remained in it, and which at least served, in a very innocent manner, to amuse, allure, and engage the attention of the vulgar, was rather inclined to bring the public worship still nearer to the Romish ritual. The consequence was, that a schism took place among the reformers in England; and the zealots, who were for carrying the reformation to the greatest extent, were, on account of their pretending to a superior *purity* of worship and discipline, denominated *Puritans*.*

These Puritans, however, were far from being united among themselves, as to a uniformity of principles. The more sober and learned among them, inclined to that form of ecclesiastical policy, which is known by the name of Presbyterian: but, such as were more thoroughly possessed with the spirit of innovation, reprobated the authority which the Presbyterian system vests in various judicatories, descending from one to another in regular subordination, as inconsistent with christian liberty. Of this latter sort of Puritans, one Robert Brown, a popular declaimer in high estimation, modelled a distinct sect, which from him took the name of *Brownists*.* He taught, that the Church of England was corrupt and anti-christian, its ministers not lawfully ordained, its ordinances and sacraments invalid, and therefore he prohibited his people to hold communion with it in any religious function. He maintained, that a society of christians, uniting together to worship God, constituted a church, possessed of complete jurisdiction in the conduct of its own affairs, *independent* of any other society, and unaccountable to any superior; that the priesthood was neither a distinct order in the church, nor conferred an indelible charter; but that every man qualified

SECTION
VIII.
1568.

1580.
Divisions
among the
Puritans.

* Hume's Hist. ch. 40, who cites Camden, as fixing upon the year 1568, for the period when the Puritans began to make themselves considerable in England.

* He was a man, it seems, of a good education, being brought up at Corpus Christi College, Cambridge. Tindal's Cont. of Rapin's Hist. vol. 15, p. 278.

SECTION to teach, might be set apart for that office by the election of the
VIII. brethren, and by imposition of their hands; in like manner, by
 1592. their authority, he might be discharged from that function, and reduced to the rank of a private christian; that every person, when admitted a member of the church, ought to make a public confession of his faith, and to give evidence of his being in a state of favour with God; and that all the affairs of a church were to be regulated by the decision of the majority of its members.* As the tenets of this new sect wore a threatening aspect, not only to the established religion, but to the government itself, it began to be deemed necessary, that some more effectual checks than they had hitherto experienced, should be given to their progress. Some peculiar acts of sedition, blended with an extraordinary religious fanaticism, occurring about this time in the city of London, seem to have accelerated the interposition of the legislature. To this cause, among others, is attributed the statute of the 35 Eliz. ch. 1, made towards the latter end of her reign;† by which it was enacted, “If any person, refusing to repair to the established church,” (as was required by preceding statutes, viz. 1 Eliz. ch. 2, 23 Eliz. ch. 1, 29 Eliz. ch. 6,) “shall, by printing or writing, advisedly or purposely, practice, or go about to move or persuade any one to deny, withstand, and impugn her majesty’s power and authority, in cases ecclesiastical, united and annexed to the imperial crown of this realm; or to that end or purpose, shall advisedly and maliciously, move or persuade any other person whatsoever, to forbear or abstain from coming to church, according to her majesty’s laws and statutes aforesaid; or to come to, or to be present at any unlawful assemblies, conventicles, or meetings, under colour or pretence of any exercise of religion; or if any person, so refusing to repair to some established church, as aforesaid, shall, either of himself or by the persuasion of any other, willingly join, or be present at any such conventicles, under pretence of religion, aforesaid; every such person, so offending, and being thereof lawfully convicted, shall be imprisoned, without bail or mainprize, until they shall conform, and make such open submission and declaration of their said conformity, as hereafter in this act is declared and appointed.” “Every such person, so not conforming himself, shall abjure and depart the realm; and in case of refusing to abjure, or of not departing after abjuration,

* Robertson’s Hist. of America, b. x.

† See note (N) at the end of this volume.

or of returning without license, he shall be guilty of felony, without benefit of clergy.”

SECTION
VIII.

1593.

This law, as was intended, affected both the Puritans and the Catholics; but was, without doubt, more particularly pointed at the former. As Elizabeth, on her accession to the throne, was indebted to the English reformers for her support against the formidable opposition which she experienced from the Catholics, her principal attention had been hitherto directed to guard against the dangers of popery. But the variety of seditious acts, which were now exhibited by those fanatics, who were for pushing the reformation to its utmost extent, gave her just cause to apprehend, that her sovereignty was in equal danger from Puritanism. The number also, of these Puritans, had now increased so much, as in itself to be a sufficient cause of alarm to those who professed the established church. If we are to credit an assertion, said to have been made by Sir Walter Raleigh, in the house of commons, in the year 1592, (but one year prior to the making this statute of 35 Eliz.) the Brownists, as they were then called, amounted to no less than twenty thousand, divided into several congregations in Norfolk, Essex, and about London.* As it was evident also, that nothing would content them, but a total abolition of the established religion, called the Church of England, not even indeed an unlimited indulgence in the exercise of their own, it was not to be wondered, that Elizabeth and her clergy should consider themselves as contending for their existence, and that these enemies of their power should feel the full force of their resentment. The persecution, if it may be so called, which these sectaries experienced, during the few remaining years of Elizabeth's reign, seems, therefore, to have been the necessary result of such a state of things.

On the accession of James to the throne of England, both the Papists and the Puritans had conceived high hopes of some happy change, each in their own favour. The Papists could not believe, that a prince, who had never expressed any hatred to them, should suddenly alter his mind, and choose to tread in the steps of Elizabeth. The Puritans imagined, that James, having been educated in their religion, that is the Presbyterian, and professed it all his life, till he arrived in England, would be propitious to them. They expected, that he would at least abate the rigour of the laws against them, if not reform many of the

1603.

State of
religious
parties in
England,
on the ac-
cession of
James I.

* See Tindal's Cont. of Rapin's Hist. vol. 15, p. 278.

SECTION faults they had found in the Church of England. Both were de-
 VIII. ceived, but the last much more than the first. Of the Catholics,
 1603. James disliked only the Jesuits, and such as were too servilely at-
 tached to the court of Rome, and the prerogative of the pope. But to the Puritans in general, he conceived a most violent hatred, especially as he thought that he discerned in them a strong inclination towards republicanism. As they were usually very familiar with their Maker, in their prayers to him, he was naturally induced to suppose, that they would take still greater liberties with him as their earthly sovereign. They both, however, presented their petitions to him. To the Catholics he answered, that he thought himself obliged to support what he found established in the kingdom. To the Puritans, he granted a pretended opportunity of justifying their principles before him, by appointing a conference to be held in his presence, of which he himself was to be moderator, between some of their principal ministers and elders* and some bishops and divines of the established church. The victory, as was to have been expected, being adjudged by him to the latter, the consequence was, that he ordered, by proclamation, the laws against non-conformists to be put in strict execution.

The court of "high commission for ecclesiastical affairs," a most odious tribunal, began now also to act against the Puritans with more severity and less control from the courts of common law, than they had done in the former reign. It was about
 1605. this time, that archbishop Bancroft exhibited his celebrated *Articuli Cleri*,† in which he enumerates many grievances of the clergy, arising from the power exercised by the courts of common law in granting writs of prohibition to the proceedings of the ecclesiastical courts, and writs of *habeas corpus* for persons imprisoned by them; among which courts, that of the "high commission" was the most prominent. This tribunal had been originally instituted in the reign of Henry VIII. as a substitute for the former power of the pope, and had been revived under the statute of 1 Eliz. ch. 1, which defined *heresy*, and authorised the queen to appoint commissioners, to sit as judges thereof in this highest ecclesiastical court. But, throughout the whole of her reign its authority is said to have been exercised

* These ministers and elders, appear to have been of the Presbyterian class of Puritans, and not Brownists. Rapin's Hist. of England, (Tindal's edit.) vol. 8, p. 18.

† See them at large in Coke's 2 Inst. p. 601.

with great moderation;* which appears to have been principally owing to the control of the courts of law.† King James, however, being evidently prejudiced against the common law,‡ and having a high opinion of his own talents as a theologian, abetted and supported the bishops in the extent of their claims to an uncontrolled jurisdiction over all matters of heresy and religion.§ The Puritans, therefore, now became liable to be harassed not only with fines and imprisonment, by the common law courts, for non-conformity, but to have their religious tenets examined by this high commission court, according to the the test of heresy prescribed by the statute.|| The rigorous penalties of abjuration of the realm, or death as a felon, in certain cases, under the before mentioned statute of 35 Eliz. also hung over their heads. But it will surprise the reader at this day, after reading these severe denunciations against the Puritans, unjustifiable in-

SECTION
VIII.
1605.

* Rapin's Hist. of England, (Tindal's edit.) vol. 8. p. 78.

† Lord Coke affirms, (4 Inst. 332,) that although there might have been many instances, in the reign of queen Elizabeth, wherein the high commission court exercised the power of fine and imprisonment, especially against the weaker sort, yet, as often as complaint had been made, the highest courts of common law always relieved them according to law and justice.

‡ It is said, that he had dropped expressions of his intention to establish the *civil* law in the room of the *common* law. Rapin's Hist. (Tindal's edit.) vol. 8, p. 77, 79. It is no small eulogium on the common law, that the advocates for arbitrary power, whether it is to be exercised by a mob or a king, have an invincible antipathy to this system of jurisprudence. The great securities for personal liberty and private property, which it upholds, are sad stumbling blocks in their way.

§ For further information with respect to this curious contest, which took place about this time, between the spiritual and temporal courts in England, see the several notes of cases on that subject in Lord Coke's 12th Rep. Also his 2 Inst. 601, and 4 Inst. 330. However censurable Coke's conduct was, in many instances, while he was attorney-general, particularly on the trial of Sir Walter Raleigh, which he made, when he became chief justice, against not only the arbitrary power assumed by the "high commission" and other ecclesiastical courts, but even against the lawless exertion of prerogative by the king himself, does him infinite honour. This independent conduct, however, in a few years, eventuated in the loss of his place of chief justice.

|| The statute of 1 Eliz. ch. 1, defines heresy to be, "only such matter or cause as heretofore have been determined to be heresie, by the authority of the *canonical scriptures*, or by any general council wherein the same was declared heresie by the express and plain words of the said *canonical scriptures*." As the almost innumerable variety of sects of christian religion unquestionably arises from their various modes of construing these "canonical scriptures," we are unavoidably led to join Mr. Justice Blackstone in his remark on this definition—"that it would not have been the worse, to have defined it in terms still more precise and particular; as a man continued still liable to be burnt, for what perhaps he did not understand to be heresy, till the judge so informed him."

SECTION
VIII.

1605.

deed, upon any other principle than self-preservation, and after a minute search through the pages of the best historians of those times, when he finds considerable difficulty in discovering one solitary instance, where a Puritan was either burnt as a heretic or hung as a felon, merely for his religion. The instances of Udal and Penry, mentioned by Hume,* were cases of *seditious libels*, punishable with death under an abominable statute of 23 Eliz. They were instances of the arbitrary exertion of the prerogative in the execution of a most tyrannical law against a *political* crime. The two Flemish Anabaptists, burnt as heretics, in her reign, had no connexion with those species of Puritans denominated Brownists, who are the subjects of our present inquiry; especially, as these Brownists, or their successors in New England, subsequently considered Anabaptists in the same point of view: and the two Arians, who suffered at the stake for heresy, in the reign of James, were alike unconnected with the Brownists. Denying the divinity of Christ, or at least his consubstantiation with the Father, it is not probable, that such orthodox christians as the Brownists would have treated them with greater leniency, had it been in their power. In corroboration of this, the remarks of Hume, upon the same subject, may with propriety be quoted: "Had the king," says he,† "been disposed to grant the Puritans a full toleration for a separate exercise of their religion, it is certain, from the spirit of the times, that this sect itself would have despised and hated him for it, and would have reproached him with lukewarmness and indifference in the cause of religion. They maintained that they themselves were the only pure church; and that their principles and practices ought to be established by law; and *and that no others ought to be tolerated*. It may be questioned, therefore, whether the administration, at this time, could with propriety deserve the appellation of persecutors, with regard to the Puritans."

Suffering, as they certainly did, during the reigns both of Elizabeth and James, by fines and imprisonment, for their non-attendance at the established church, and now liable to be treated as heretics, by the high commission court, or compelled to abjure the realm, under the penalties of the statute before mentioned, the only alternative left for them seemed to be conformity or a voluntary exile. From the small proportion which the

* See his Appendix to queen Elizabeth's reign.

† See his Appendix to the reign of James I.

number of those who subsequently emigrated to Holland, bore to the whole of their society, at that time in the kingdom, we may infer that an exterior conformity was adopted by a very large majority of them. Perhaps, conciliatory methods, blended with compulsion, might also have been practised towards them; for we find that some of them were not proof against either temptation or persecution. Their founder and leader, Brown, either frightened by the terrors of the law, or allured by the comforts of a good living, which, it seems, he afterwards accepted, surrendered the glory of heading a religious party, for a snug benefice in the established church. Others, however, stuck to their tenets with a more consistent obstinacy. From their own account of themselves, as handed down to us by the successors of their sect in America, they must have existed in considerable numbers, about this time, in the north of England, particularly in Nottinghamshire, Lancashire, and Yorkshire. They had there, it seems, formed themselves into two distinct bodies or churches. Over one of them Mr. John Smith presided as pastor; over the other Mr. John Robinson.* Preferring a voluntary banishment from their native country to a conformity to the discipline of the established church, Robinson and a few of his followers stole away by degrees, (for it seems they were not permitted openly to leave the kingdom,†) to Am-

SECTION
VIII.
1605.

* In the Extracts from the Plymouth Records, published in Hazard's Collections, vol. 1, p. 350, are the following passages on this subject: "These people became two distinct bodies, or churches, in regard of distance of place, and did congregate severally, for they were of several townes and villages; some in Nottinghamsheire, some in Lankisheire, and some in Yorksheire, where they bordered nearest together. In the one of these churches, besides others of note, was Mr. John Smith, a man of able giftes, and a good preacher, whoe afterwards was chosen their pastour; but these afterwards falling into some errors in the low countreys, there, for the most part, buried themselves and their names.

"But in this other church, which must be the subject of our discourse, besides other worthy men, was Mr. Richard Clifton, a grave and reverend preacher, whoe by his paines and diligence, had done much good, and under God had bin a meanes of the conversion of many; and alsoe that famous and worthy man, Mr. John Robinson, whoe afterwards was theire pastour for many years, until the Lord tooke him away by death; and alsoe Mr. William Brewster, a reverend man, afterwards was chosen an elder of the church, and lived with them untill old age and death."

Their dispersed situation, herein described, together with their danger in convening in large bodies, most probably first suggested that form of hierarchy which they afterwards adopted, to wit, that each *congregation* should be a distinct, *independent* church of itself.

† This prohibition appears to have been, to emigration in large companies, which was frequently attempted. See Extracts from the Plymouth Records, in

SECTION VIII. Amsterdam, as the states of Holland, after their independence, affected to allow a general toleration to all sects of religion. They had not lived at Amsterdam more than a year, before ambition, through which even angels are said to have fallen, set these “holy brethren and exiled saints” by the ears.* After Robinson and his flock had been there some time, they were followed, it seems, by another company from England, under the guidance of the before mentioned John Smith. As these congregations were not only distinct, but *independent* of each other, their pastors also claimed equal and distinct supremacy over their several and respective flocks. No subordination in their ecclesiastical government being acknowledged, these pastors, like little monarchs of two little neighbouring kingdoms, jealous of each other’s power, soon found cause of quarrel. Whatever this cause was, it eventuated, it seems, either through the superior prowess of Smith, or the more humble meekness of Robinson, in the removal of the latter and his followers to Leyden.†

1609. During the residence of these people, both at Amsterdam and Leyden, it appears that they must have undergone considerable hardships. This, indeed, was naturally to have been expected. They were, most of them, poor country people, out of the north of England, raw and simple in their manners, and uninformed in their minds: fit subjects, indeed, for religious imposture. Many of them, perhaps, had been inured in their own country to the acquirement of their daily bread by personal labour, but they were now transplanted into another nation populous in the extreme, and with whom, consequently, the means of livelihood, even by labour, were more difficult to be attained. Added to this, they were unacquainted with the language, and ignorant of the manners and customs of the people, with whom they now dwelt. There is nothing extraordinary then, that the leaders of this little band of enthusiasts soon had cause to complain, “that many of their children were drawn away and departed from their parents; some became soldiers, others took upon them far voyages by sea, and others worse courses, to the great grief of

Hazard’s Collections, vol. 1, p. 351, and Rapin’s Hist. of England, (Tindal’s ed.) vol. 8, p. 72.

* See the highly-wrought characters of “Tribulation, the pastor, and Ananias, the deacon,” in Ben Jonson’s *Alchymist*, written about this time.

† Extracts last cited, in Hazard’s Collections, vol. 1. p. 354, and Hutchinson’s Hist. of Massachusetts, Appendix, No. 1, at the end of vol. 2.

their parents and dishonour of God.”* “They had just apprehensions, therefore, that their little community would soon become absorbed and lost in a foreign nation.”† The celebrity which commonly attaches to the name of a founder of a religious sect, was in great danger of being forever covered in obscurity. If, perchance, some historian of the country in which they dwelt, should deign to mention their fortunes or their sufferings, it would be only with the sentiment of pity and compassion, the most galling circumstance to an ambitious mind. The glory, or if it is insisted upon, “the natural and pious desire of perpetuating a church which they believed to be constituted after the simple and pure model of the primitive church of Christ, and a commendable zeal to propagate the gospel in the regions of the new world,” induced them to think of a removal to America.‡ But to what part of that grand continent, whether to the southern or northern region of it, was not at first determined by them. Sir Walter Raleigh had raised the fame of Guiana, about this time, and it is probable, that they had heard of the successful progress of the English in colonizing Virginia. The former was represented as “rich, fruitful, and blessed with perpetual spring; where vigorous nature brought forth all things in abundance and plenty, without any great labour or act of man;” but to this was opposed the unhealthiness of the country, and the propinquity of the Spaniards. Virginia was next thought of; and to this it was objected, “that if they lived amongst the English there planted, or so near them as to be under their government, they should be in as great danger to be troubled and persecuted for their cause of religion, as if they lived in England, and it might be worse, and if they lived too far off, they should have neither succour nor defence from them. At length, the conclusion was, to live in a distinct body by themselves, under the general government of Virginia.”§

Having formed this resolution, they delegated (in the year 1617. 1617) two of their society, Robert Cushman and John Carver, to go to England, in order to negotiate with the Virginia company for their sanction in this proposed settlement, as also to as-

They form
the design
of remov-
ing to
America.

SECTION
VIII.
1609.

Negotiate
with the
Virginia
company
for that
purpose.

* Extracts from the Plymouth Records, in Hazard's Collections, vol. 1, p. 357-8.

† Holmes's Annals, vol. 1, p. 197,

‡ *Ibid.*, and see note (O) at the end of this volume.

§ Extracts from the Plymouth Records, in Hazard's Collections, vol. 1, p. 360. “The general government of Virginia,” here meant, was that which took place under the second and third charters of Virginia before mentioned.

SECTION VIII. certain whether the king would grant them liberty of conscience in that distant country. These agents found the Virginia company very desirous of the projected settlement in their American territory, and willing to grant them a patent with as ample privileges as they had power to convey. They found also friends to intercede with the king for them, particularly Sir Robert Naunton, who was then, or in the succeeding year, made one of the principal secretaries of state.* When Sir Robert urged to the king, that it was bad policy to unpeople his own kingdoms for the benefit of his neighbours, and that he could have no objection to grant them religious liberty in America, where they would still continue to be his subjects, and where they might extend his dominions, his majesty's answer is said to have been, that it was "a good and honest proposal;" but he positively refused to allow or tolerate them by his public authority under his seal, though he promised, that he would connive at them, and not molest them.† Their friends in England, notwithstanding this refusal, advised them to pursue their scheme of settlement, and gave it as their opinion that they would not be troubled.

[1618. With this answer, the agents returned to Holland in the year following; but the king's refusal damped the ardour of their religious brethren, for a removal for some time. Debating upon the subject among themselves, it seemed to be at last, the opinion of a majority of them, that they might safely proceed without an express license of the king. Reasoning very justly on the king's character, they concluded, that if there was no security in the promise intimated, there would not be much greater certainty in a written confirmation of it: for if afterwards, there should be a purpose or desire to wrong them, though they had a seal as broad as the house floor, (as the writer expresses it,) it would not serve the turn, as there would be means enough found to recal or reverse it. Wherefore, they resolved to despatch

* It is said in Rapin's Hist. of Eng. (Tindal's edit.) vol. 8, p. 135,—that "Secretary Winwood dying about this time, (October 27th, 1617,) Sir Robert Naunton, a protestant, and Sir George Calvert, a papist, were made Secretaries." But from a late work, apparently authentic, entitled, "A Political Index to the Histories of Great Britain and Ireland, by Robert Beatson, L. L. D." it appears, that Sir John Herbert succeeded Sir Ralph Winwood, in 1617, as secretary, and that Sir Robert Naunton was made secretary in 1618, *vice* Herbert, and Sir George Calvert *vice* Sir Thomas Lake in 1619.

† Mod. Univ. Hist. vol. 39, p. 271. Extracts from the Plymouth Records, in Hazard's Collections, vol. 1, p. 361.

messengers again, to conclude a contract with the Virginia company, and to procure a patent with as good and ample conditions as they could; as also to treat and agree with such merchants and other friends, as had manifested a disposition to hazard some capital in the adventure of such a voyage.

Their agents arriving again in England, in the succeeding year, (1619,) found the council and company of Virginia* so disturbed with factions and quarrels among themselves, as that no business of any importance could be transacted with them. These dissensions appear to have been founded on very frivolous grounds, if we are to believe the statement of them given by Robert Cushman, one of the agents for the Puritans.† It seems, that not long before the last agents had returned to England, Sir Thomas Smith repining at his many offices and troubles, wished the company of Virginia to ease him of his office in being treasurer and governor of the Virginia company; whereupon the company took occasion to dismiss him, and chose Sir Edwin Sands in his stead. But Sir Thomas, vexed it seems, at being so soon taken at his word, grew very angry, and raised a faction to cavil and contend about the election, and endeavoured to tax Sir Edwin with many things, that might not only disgrace him, but also either induce him to resign or disqualify him for the office.‡ What was the issue of these bickerings, Cushman does not state: but Sir Edwin continued in his office; and the affairs of the colony already planted in Virginia, seemed to have prospered unusually from his accession thereto.§ From

SECTION
VIII.

1618.

1619.

Dissensions in the
Virginia
company
occasion
delay.

* This council and company of Virginia, was composed of persons acting under the third charter of the South Virginia or first colony, sometimes called the London company. The North Virginia, or Plymouth company, appear at this time to have relinquished all further attempts at making settlements.

† See his letter dated May 8th, 1619, taken from the Plymouth Records, in Hazard's Collections, vol. 1, p. 366, 368.

‡ It may, perhaps, not be unnecessary to mention, that this Sir Thomas was not the learned Sir Thomas Smith, who was so celebrated in the reign of queen Elizabeth. That gentleman died in August, 1577. See Rapin's Hist. (Tindal's edit.) vol. 7, p. 404. This was probably some eminent merchant of London, and a city knight. He was appointed treasurer of the Virginia company by the king, in the body of the second charter of Virginia, of May 23, 1609; though provision was made by that charter, that such treasurer should afterwards be elected by a majority of the company, and the third charter seems to have confirmed that privilege.

§ Sir Edwin Sands (or Sandys,) is represented by Hume, (Hist. of England, note [DD] to chap. 45,) as "a man of the greatest parts and knowledge in England," at this time next to Sir Francis Bacon. It was, on Sir Edwin's suggestion, after he was at the head of the company as treasurer, that a freight of

SECTION VIII. his letter to Mr. Robinson and Mr. Brewster, of November 12th, 1617, he appears to have been friendly to their proposal of removing to America. It is couched in those polite and obliging terms, which the chief officer of such a company, who possessed liberal and generous sentiments, would have written.*

1619.

The extraordinary ill treatment of a certain captain Blackwell, towards some passengers of his ship, whom he carried about this time, as colonists in the settlement on James river, in Virginia, operated much in the discouragement of the intended removal of the Puritans.† However, a patent being at length obtained from the Virginia company, it was carried to Leyden for the consideration of the people there, with several proposals from English merchants and friends, for their transportation. By the advice of some friends, it seems, this patent was not taken in the name of any of the society at Leyden, but in the name of a certain John Wincob, or Wincoll, who was a servant in the family of the Countess of Lincoln.

1620.

Embark
for Ameri-
ca, and set-
tle in Ply-
mouth,
Massachu-
setts.

After mature deliberation, it was at last agreed, among the Puritans at Leyden, that a part of their congregation should go to America, in order to make preparation for the rest; and therefore, such as chose to become the first adventurers were requested to fit and prepare themselves for the voyage. Several of the congregation sold their estates, and made a common bank; which, together, with money received from other adventurers, enabled them to purchase a small vessel of sixty tons, and to hire in England another of one hundred and eighty tons, for their intended enterprise. In this smaller vessel, the first adventurers embarked at or near Leyden, for Southampton, where most of them were to re-embark on board the larger ship, called the May Flower. They were under the conduct and direction of William Brewster, the ruling elder of their church; for Robinson did not accompany them.‡ After their arrival at Southampton, their

young women was sent over, in the year 1620, to the planters of Virginia, to be bought by them as wives, they being mostly destitute of families. The scheme succeeded so well, that it was repeated. It was probably also owing to him, that the commerce with the colony in Virginia, which had hitherto been monopolized by the treasurer and company, to the great depression of the colony as it was said, was in the same year laid open to all without restrictions. See Holmes's Annals, vol. 1, p. 204, 266.

* See this letter and their answer in Hazard's Collections, vol. 1. p. 362.

† See Cushman's letter in Hazard's Collections, vol. 1, p. 362.

‡ Mr. Robinson's caution, in evading the accompaniment of his flock to America, seems to afford some ground to suspect that his "Catholicism," (though praised by Mr. Holmes in his note V. before cited, partook somewhat of that of

small ship being deemed unfit for sea, they were obliged all to em-SECTION
bark on board the May Flower, in which they finally left En-
VIII.
gland on the sixth of September, 1620. After a boisterous pas-
1620.
sage, they discovered on the ninth of November, the land of
Cape Cod. Perceiving that they had been carried to the north-
ward of the place of their destination, they stood to the south-
ward, intending to find some place near Hudson's river for set-
tlement. Falling, however, among shoals, they were induced,
from this incident, together with the consideration of the ad-
vanced season of the year, and the weakness of their condition,
to relinquish that part of their original design. The master of
the ship, influenced by the fears of the passengers, and their ex-
treme solicitude to be set on shore, shifted his course to the
northward. The real cause of his doing which has been alleged
to have been, a reward clandestinely promised to him in Holland,
if he would not carry the English to Hudson's river.* Be that
as it may, steering again for the cape, the ship was clear of the
danger before night; and the next day, a storm coming on, they

his prototype, Robert Brown. This seems to be confirmed by what Mr. Holmes, in the same note observes, that "at first indeed, he favoured the rigid separation from the Church of England; but, after his removal to Holland, *he was convinced of his mistake, and became ever after, more moderate in his sentiments respecting separation.*" And further, by what is said in Hutchinson's Hist. of Massachusetts, appendix No. 1. to vol. 2: "He was at first a thorough separatist, and Mr. Hubbard says, was transported with their principles so far as to publish his opinions against hearing any of the preachers of the Church of England, were they never so learned and pious, but *afterwards acknowledged his error in a judicious and Godly discourse.*" Although the American republic is indebted to these "mistakes" and "errors" for those populous and flourishing states, denominated New England, yet, as Mr. Robinson evidently had no such sublime ideas in contemplation, and, if he had, the end would not sanctify the means, these "mistakes" and "errors" seem to form a lesson to ambitious religionists, to be cautious in leading simple and ignorant country people into situations, wherein they must necessarily endure inexpressible hardships and misery.

* Although it is alleged by Morton, (New England Memorial 13,) that "Of this plot, betwixt the Dutch and Mr. Jones, I have had late and certain intelligence." To which Mr. Holmes, in his Annals, (vol. 1, p. 199,) appears to give entire credit: yet, as it is stated by Hutchinson, (Hist. of Massachusetts, vol. 1, p. 11,) that "the Dutch laboured to persuade them (the English at Leyden,) to go to Hudson's river, and settle under their West India Company;" the fact is stated as above with some hesitation. It is possible, however, that as these adventurers preferred being under the government and protection of the English, and their designed place of settlement was near Hudson's river, but to be considered as a part of the government of Virginia, the Dutch might be averse to having them as neighbours in that way, and for that reason bribed the captain to carry them farther from their settlement at New York. See the Appendix No. 1, to Hutchinson's Hist. vol. 2.

SECTION VIII. dropped anchor in Cape Cod harbour, where they were secure from winds and shoals.

1620.

Finding the harbour to be in the forty-second degree of north latitude, and therefore beyond the territory of the South Virginia company, they perceived that their charter, received from that company, was here useless.* The consequence of this inutility of their charter, was, that they were destitute of the powers usually held necessary to institute a government. The danger of this situation was strongly enforced upon the minds of the more prudent part of them, by some symptoms of faction and disorganization exhibited during the passage among the inferior class of them, who were heard to mutter, that when they should get on shore, one man would be as good as another, and they would do as they pleased. It was, therefore, judged expedient, that before disembarkation, they should combine themselves into a body politic, to be governed by the majority. A written instrument, drawn for that purpose, was accordingly subscribed on board the ship, on the eleventh day of November, by forty-one of their number, who are supposed to have been all the males of age in the company, which amounted to one hundred and one persons.† John Carver was then unanimously chosen their governor, for one year. The principal intention of this written instrument of express covenant, is said to have been "of a mere moral nature, that they might remove all scruples of inflicting necessary punishments, even capital ones, seeing all had voluntarily subjected themselves to them." It does not appear, however, notwithstanding the expediency of this express compact, that the leaders of these colonists considered themselves so entirely brought back to a state of nature, and so totally emancipated from all former obligations, as to acknowledge no superior political power, and to be independent of all other governments. Although the most of them had been residents for some time in Holland, and therefore, in modern construction, were now *expatriated* from their native country; yet they seem to have considered themselves a English subjects, and entitled to all the benefits and privileges resulting from the common law of England,

* This seems to be a better and stronger reason, why they never made any subsequent use of their charter from the South Virginia company, than that which has been usually assigned by historians; that is, because Wincob, the patentee, never went to New England.

† See this instrument in Hutchinson's Hist. of Massachusetts, vol. 2, appendix No. 1, and in Hazard's Collections, vol. 1, p. 119.

and such English statutes, as were applicable to their local situation. This indeed might possibly have been so deemed, as being the consequence of both their contract with the Virginia company, and the permission of the king to settle in North America. They are said to have, therefore, "resolved to make the laws of England their rule of government, until they should agree upon laws suited to their peculiar circumstances.*"

Several of their principal men now went in their boat or shallop to search for a suitable place where they might fix their first settlement. After ranging for some days about the bay of Cape Cod, they entered a harbour, which after sounding they found to be fit for shipping, and after exploring the land adjacent to the harbour, they judged it a convenient situation for a settlement, and returned with the welcome intelligence to the ship. They proceeded with the ship to the newly discovered port, where they arrived on the sixteenth day of December, a very improper season of the year, indeed, for the commencement of a colonial settlement, in such a climate. But necessity seemed now to have left them no choice, and as soon as they could erect habitations to receive their company, they were landed. The place, it seems, was called by the natives Patuxet, but is now well known by the name of Plymouth, in the State of Massachusetts. From this small beginning, time has at length produced those now populous States, which lie to the northward of New York. It is unnecessary for us to pursue their history any farther in this place.

* Hutchinson's History of Massachusetts, vol. 2, Appendix No. 1.

SECTION IX.

Causes of the severe statutes against Roman Catholics in England, during the reign of Elizabeth—Their conduct on the accession of James I.—The cause of additional statutes against them—The excesses of the Catholics and Puritans give rise to political parties—First scheme of a colony of English Catholics in Newfoundland, under the patronage of Sir George Calvert—Sir George Calvert created lord Baltimore, visits Virginia, with further views of colonization—The conduct of the Virginians towards him—Differences among the Catholics with respect to the oaths of allegiance and supremacy—Lord Baltimore forms the scheme of settling a colony in Maryland—Settlement of a colony of Swedes on the Delaware—The Virginians oppose the lord Baltimore's scheme—William Claybourne's claim—Lord Baltimore returns to England, and relinquishes his views of a settlement on Newfoundland—Obtains the promise of a grant of the province of Maryland, which is given on his death to his son Cecilius.

SEC. IX.

While the Puritans had thus sought an asylum in America, from the rigour of those laws which the government of England, in the reigns of Elizabeth and James, had thought proper to be enacted against non-conformists to their established church, the Papists, who were equally obnoxious to the majority of the nation, had now begun also, from similar motives, to look about for a place of refuge. But it will be proper to examine a little into the precedent causes, which brought them into this situation.

It must be acknowledged by every candid Catholic, at this day, that the church of Rome, from the third century to the French revolution, having considered itself as the only true christian church, has uniformly held that all persons who ventured to promulgate and maintain religious doctrines contrary to those which the ancient church are supposed to have received from Jesus Christ, were to be deemed heretics, liable, upon the principles of christianity, to the punishment of death. Intolerance, therefore, with respect to other sects of the christian religion, seems to have been a principle necessarily inherent in the papal hierarchy. Those who professed this system of religion, seem to have been bound by the obligation of their religious profession, to apply the strong arm of persecution, in order to correct any presumptuous aberration from the doctrines of their church. It appears, therefore, that the reformers in general entertained irrational expectations, when they demanded a toleration of their

opinions. It was, without doubt, under these impressions, that the English reformers, especially in the reign of Elizabeth, renounced such expectations, as visionary hopes. The cruel persecutions also, which they experienced during the reign of Mary, taught them what they were to expect, should the Papists retain their power in that nation. There were, moreover, certain principles maintained by the Papists on the continent of Europe, at the period of time of which we are now treating, which were totally inconsistent with any thing like good government. That the pope had a power of excommunicating kings who refused to obey his directions, and that thereupon all subjects of such king so excommunicated, were absolved from their allegiance to him; and besides, that any of the subjects of such king might privately assassinate him, and for such deed not only obtain the pardon and blessing of his holiness, but thereby merit an everlasting crown of glory in heaven; and moreover, that it was lawful to put heretics to death by private assassination, without the formality of legal trial and public execution; that these were political as well as religious tenets, held by the greater number of the zealous Roman Catholics until the latter end of the seventeenth century, cannot possibly be denied.* The horrid massacre of the French Protestants on St. Bartholomew's day, in the year 1572, and the assassinations of two kings of France, Henry III. and IV. and that of the prince of Orange were all in the sixteenth century, avowedly justified on these principles.† Much cause, therefore,

SEC. IX.

* See note (P) at the end of the volume.

† The assassins of the two kings of France were evidently instigated thereto more by their religious tenets than the political principle of tyrannicide. Sermons were preached, and books were written, to prove that, these princes being heretics, and excommunicated by the pope, it was meritorious, even in individuals, to remove them. Nor do these tenets appear to have been peculiar only to the Jesuits. John Clement, who assassinated Henry III. was a jacobin monk, of the order of *Dominicans*. The whole convent knew his design, before he went on the execution of it, and approved it; and pope Sixtus, Vth, of hypocritical notoriety, was not ashamed, in a full consistory, to magnify the holy zeal of this bloody villian, and to extol his courage and piety beyond that of Judith. The reward set on the head of William, prince of Orange, (the Washington of the states of Holland,) by Philip II. of Spain, was, perhaps, the real motive of both the assassins who attempted his life; but the first of them, who only wounded him, had confessed his intention to a *Dominican* priest, and received from him absolution, and a promise of eternal reward. The massacre of St. Bartholomew's was done by the orders of the king, (Charles IX.) who openly avowed it, and was complimented upon it by the parliament of Paris, and pope Gregory XIII. went in a procession on foot, to a church in Rome, to give public thanks on the news thereof, and ordered a jubilee over all Europe to be observed, in consideration of that great blow given to the heretics. See *Bayle's Hist.*

SEC. IX. had the people of England to apprehend danger in the enjoyment of their civil and religious liberties, had the crown of that kingdom descended, on the death of Mary, to any other claimant than Elizabeth. Hence, therefore, the severe laws which were enacted against Papists during the reign of that princess, were naturally to have been expected. Not that the free enjoyment of religious opinions is not a natural right, inherent in every individual member of society, but if political opinions are so mingled with religion, as to affect the just as well as necessary administration of the government, without the preservation of which mankind cannot well, or at least happily exist, and those who profess such opinions are constantly endeavouring to put them into action and practice, through the medium of religion; reason and common sense dictate the necessity of suppressing the exercise of even such ostensible rights, by such laws as shall be adequate to the purpose.* Whether the several statutes enacted against popish recusants, during the reigns of Elizabeth and James, transcended these ends and purposes, and were unnecessarily severe, is quite a different question from that which involves the position just mentioned.

1558. In confirmation of these observations, one of the first incidents which occurred on the accession of Elizabeth to the throne, before any parliament had sat, or statutes been enacted, deserves notice.—Edward Carne, the English ambassador, at Rome, had orders to notify to the pope, (Paul IV.) Mary's death and Elizabeth's accession to the crown. This haughty high priest, whose bigotry of mind and austerity of temper appear to have increased in his extreme old age, replied to the ambassador, "That it was great boldness in her to assume the crown without his consent; that England was a fief of the holy see; that being illegitimate, she could not possibly inherit that kingdom; that she deserved no favour at his hands; but if she would renounce her pretensions, and refer herself wholly to him, he would show a fatherly affection for her."† In these more en-

Causes of the severe statutes against Roman Catholics, in England, during the reign of Elizabeth.

Dict. art. Boucher, Chastel, Guignard, Hen. III. and Sanctesius. Also, the *Mod. Univ. Hist.* vol. 24, p. 271, 328, 354, 361, 435.—Vol. 26, p. 368, 398.—Vol. 31, p. 91.

* Voltaire well observes upon the dispute between the Gallican church and the pope, in the seventeenth century, before mentioned, "that it was the cause of the people, whose repose requires, that their sovereign be independent of any foreign power." *Age of Louis XIV.* ch. 31.

† Rapin's *Hist. of England*, (Tindal's edit.) vol. 7, p. 183. Hume's *Hist. ch.* 38. This pope refused, but a few months before this, nearly upon the same

lightened days, no person can understand this in any other sense, than an assumption of power by a high priest of a particular sect of christians, to dispose of the civil government, and with it, the people of an independent nation. SEC. IX.
1558.

The barbarous association entered into, in a few years afterwards, between the courts of France and Spain, at their celebrated interview at Bayonne, in the year 1565, for a total extermination of the Protestants by fire and sword, (of which the massacre of St. Bartholomew's, before mentioned, was, without a doubt, a consequence,) affords strong indication of the principles of the Catholics at this era of time: which association seems to be too well authenticated in history, to admit of doubt.* 1565.

As a further proof of the improper intermixture of religion and politics, by the Catholics of these times, may be mentioned the bull of excommunication, issued by pope Pius V. against Elizabeth, bearing date February 25, 1569, wherein, after declaring, "that, as successor of St. Peter, he was constituted by Him that reigneth on high, over all nations and all kingdoms, that he might pluck up, destroy, dissipate, ruinate, plant, and build," he proceeds thus: "We deprive her of her pretended right to the kingdom, and of all dominion, dignity, and privilege whatsoever; and absolve all the nobles, subjects, and people of the kingdom, and whoever also have sworn to her, from their oath and all duty whatsoever, in regard of dominion, fidelity, and obedience."† It was evident, from the concurrent events of the times, that this bull was intended to foment plots and insurrections against her, and particularly to forward a rebellion of her subjects, which was at that time in agitation in the north of England. In pursuance of these objects, one John Felton had the hardihood to affix the bull to the gates of the bishop of London's house; and scorning either to fly or to deny the fact, he was arrested, tried, condemned, and hanged: and thereby obtained the empty repute of a glorious martyrdom.‡ 1569.

principles, to confirm the election of Ferdinand I. of Austria, as emperor of Germany, on the resignation of Charles V. "contending that the pope, as the vicegerent of Christ, was entrusted with the keys both of celestial and terrestrial government; and that from him the imperial jurisdiction was derived." Robertson's History of Charles V. b. 12.

* Rapin's Hist. (Tindal's edit.) vol. 7, p. 261. Hume's Hist. ch. 39.

† Woodeson's Lect. vol. 2, p. 535.

‡ Hume's Hist. ch. 40. Rapin's Hist. (Tindal's edit.) vol. 7, p. 350.

SEC. IX.

1585.

Not content with these means of dethroning the queen, and thereby restoring themselves to their former ascendancy in the state, the Catholics had recourse to the inhuman scheme, of causing her to be assassinated. One William Parry, an English Catholic gentleman, had received the queen's pardon, for a crime, by which he was exposed to capital punishment; and having obtained permission to travel, he retired to Milan, and made open profession of his religion, which he had concealed while he remained in England. He was here persuaded by a Jesuit, that he could not perform a more meritorious action, than to take away the life of his sovereign and his benefactress. The pope's nuncio at Milan, when consulted by him, approved extremely of this pious undertaking; and Parry, though still agitated with doubts, went to Paris, with an intention of passing over to England, and executing his bloody purpose. He was here also encouraged in the design by one Thomas Morgan, an English Catholic refugee, then residing in France, of great credit in the party; and though some other Catholic priests told him that the enterprise was criminal and impious, yet having received the further encouragement of the pope's nuncio at Paris, he determined to persist in his resolution. Before he left Paris, he wrote a letter to the pope on the subject; in which he communicated his intention to the holy father, and craved his absolution and paternal benediction. This letter being conveyed to the pope, through the cardinal Como, he received an answer from the cardinal; by which, he found that his purpose was extremely applauded, and he went over to England, with a full design of carrying it into execution. But, as Hume on this occasion justly observes, "so deeply are the sentiments of morality engraved in the human breast, that it is difficult even for the prejudices of false religion, totally to efface them." This bigotted assassin resolved, before he came to extremities, to try every other expedient for alleviating the persecutions under which the Catholics at that time laboured. He found means of being introduced to the queen: assured her that many conspiracies were formed against her; and exhorted her, as she tendered her life, to give the Romanists some more indulgence in the exercise of their religion. But, lest he should be tempted by the opportunity, to assassinate her, he always came to court unprovided with every offensive weapon. He even found means to be elected a member of parliament; and having made a vehement harangue

against the severe laws enacted against the Catholics, was committed to custody. This circumstance, together with that of his perusal of a book, then lately written and published by a doctor William Allen, afterwards a cardinal, wherein it was attempted to be maintained, that it was not only lawful, but honourable, to kill princes excommunicated, confirmed him in his former resolution.* Having obtained his liberty, he communicated his intention to a person of the name and ancient family of the Nevils, who at first entered zealously into the design, and was determined to have a share in the merits of its execution. But Nevil, becoming in the mean time, next heir to the title of the earl of Westmoreland, which had been forfeited by the last earl, he conceived hopes, that by doing some acceptable service to the queen, he might recover the estate and honours. He therefore, betrayed the whole conspiracy to the ministers; and Parry, being thrown into prison, confessed the guilt, both to them and to the jury who tried him. The letter from cardinal Como, being produced in court, put the encouragement he had received both from the pope and the cardinal, beyond all question.†

SEC. IX.
1585.

These incidents are here mentioned, only as a few of the most prominent proofs, with which the historians of those times abound, of the improper conduct of the English Catholics in the reign of Elizabeth; which, if not a complete jurisdiction, yet greatly palliates the injustice, if any, in enacting those rigorous statutes against popery, which took place in her reign, and which could not have been justified on any other principle.‡

On the death of Elizabeth, and on the accession of James to the throne, the English Catholics, as before observed, had cherished ardent hopes, that he would restore them to their lost influence and power. Disappointed in these expectations, and

1603.
Their conduct on the accession of James I.

* This cardinal Allen was originally an English Catholic, bred at the university of Oxford, but shortly after Elizabeth's accession to the throne, and the reformation of the reformed religion, he retired from England, and had the principal hand in founding the English Catholic college at Douay, on the borders of France and Flanders, in the year 1568, where probably he wrote his above mentioned mischievous book. It was from here, as well as from similar institutions at St. Omer's and Leige, that the Catholics in England were supplied with priests during the reigns of Elizabeth and James. He was made a cardinal by pope Sixtus V. about the time of the famous invasion of England by the Spanish armada, in 1588, at the particular request of Philip II., to whom this pope had given the investiture of England, after having excommunicated Elizabeth, and deprived her as far as he could, of her right to the kingdom. See Rapin's Hist. (Tindal's edit.) vol. 7, p. 415, and the Mod. Univ. Hist. vol. 26, p. 388.

† Rapin's Hist. (Tindal's edit.) vol. 7, p. 446. Hume's Hist. ch. 41.

‡ See note (Q) at the end of the volume.

SEC. IX. surprised and enraged, to find James on all occasions, express
 1603. his intention of strictly executing the laws already enacted against them, and moreover actually giving his royal assent to further rigorous statutes against them,* a few of the most zealous among them began to revolve in their minds some means of liberating themselves from the persecution they experienced. In the fury of these sentiments, they meditated that horrible contrivance usually denominated the gunpowder plot: "an event," as Hume observes, "one of the most memorable that history has conveyed to posterity, and containing at once a singular proof both of the strength and weakness of the human mind; its widest departure from morals, and most steady attachment to religious prejudices; a fact as certain, as it appears incredible." As this scheme consisted in blowing up by gunpowder, the two houses of parliament, while the king was delivering his speech to them from the throne, the excellence of it, as boasted of by them, was, that by a sort of retributive justice, it would destroy at one blow, the authors of their sufferings, and bury their principal enemies in one common ruin. "They flattered themselves with the vindictive pleasure of beholding those sacrilegious walls, in which were passed the edicts for proscribing their church, tossed into a thousand fragments." Their scheme, however, was discovered in a very extraordinary manner, within a few days prior to its intended execution, and consequently became abortive.

1605-6. The parliament met in safety, and notwithstanding the king's
 The causes of additional statutes against them. speech to them contained a softening apology for the Catholics, they proceeded to enact laws, not only for the attainder of such offenders in the late plot, as had made their escape out of the kingdom, but "for the better discovering and repressing of popish recusants," and "to prevent and avoid dangers" arising from such recusants.† By these statutes, additional disabilities, restraints, penalties and forfeitures, were imposed upon the English Catholics beyond what they had been before liable to. And thus, by an intemperate zeal and injudicious conduct, not comports with any sound principles of morality, however consistent it might be with their religious tenets, they brought on themselves a greater degree of intolerance from the Protestants towards them, than they would otherwise have experienced.

* See the statutes of 1 Jac. I. ch. 4 and 25.

† See the statutes of 3 Jac. I. ch. 4 and 5.

It does not appear that any other statutes against Catholics were enacted during the remainder of James's reign. Those already mentioned, both of this and the preceding reigns, contained severities enough to keep them in all due subjection, had those laws been executed on all occasions with the utmost rigour. But it seems to have been one of the greatest anxieties of James's life, to exculpate himself in the eyes of the rest of Europe, from the charge of being a persecutor of the Catholics, though he heartily joined in the suppression of the Puritans. He accordingly, therefore, pardoned popish recusant convicts, or remitted their forfeitures, as often as the clamor of his Protestant subjects would permit him to do it with any seeming propriety. As the house of commons during his reign, was composed entirely of members professing to be of the established Protestant Church, among whom were many strongly tinctured with Puritanism, and as the administration of justice and the execution of the laws, would necessarily be entrusted to many zealous Protestants, it soon became impossible for the Catholics to live in the kingdom, and at the same time openly profess their religion. Whenever, therefore, any great incident occurred relative to persons of that persuasion, the nation seemed to feel an uncommon alarm. The assassination of Henry IV. of France, which happened not long afterwards, had such an effect upon the English nation, that James, instigated in all probability not a little by a sense of his own personal danger, was under a necessity of issuing his proclamation, commanding all jesuits and priests to depart the kingdom, and that no recusants should come within ten miles of the court. This tragical event in France, so roused the antipathy of the Protestants to the Catholics, that the laws began now to be executed against them with increased rigour and severity. The king's absurd obstinacy, in persisting in his endeavours to marry his son Charles to a princess of the royal family of Spain, was another constant source of uneasiness to his Protestant subjects. They dreaded the consequences of such a union, to their party in England; and as the increased influence and power of the house of commons, became obviously discernable towards the latter part of his reign, insomuch that larger strides towards that political liberty, which they afterwards, in Charles's reign, more boldly assumed, were for the first time manifested by that body, in a remonstrance to the king, on the then state of affairs. Jealous of the extraordinary propensity of James to fa-

SEC. IX.

1606.

1610.

SEC. IX. 1621. your the Catholics, they urged to him in a bolder tone than any house of commons had ever before used towards a sovereign of England, the dangers which they apprehended to the Protestant religion. Among the many *causes* of those great and growing mischiefs which they apprehended, they represented "the develish positions and doctrines whereon popery is built, and taught with authority to their followers, for advancement of their temporal ends.

"The expectation of the popish recusants of the match with Spain, and feeding themselves with great hopes of the consequences thereof.

"The interposing of foreign princes, and their agents, in the behalf of popish recusants, for connivance and favour unto them.

"Their forfeitures compounded for, at such mean rates, as amounted to less than a toleration.

"The licentious printing and dispersing of popish books, even in the time of parliament.

"The swarms of priests and Jesuits, the common incendiaries of all christendom, dispersed in all parts of the kingdom.

"And that the popish religion had such a restless spirit, that if it should once get but a connivance, it would press for a toleration: if that should be obtained, they must have an equality; and from thence they would aspire to superiority, and will never rest until they get a subversion of the true religion."

Among a variety of other remedies for these evils, they pressed his majesty "to put in execution the laws for preventing of dangers by popish recusants."*

The excesses of the Catholics and Puritans, give rise to political parties.

It is at this session of parliament, that historians have fixed the era of the rise of the two distinct political parties in England, which have subsisted even to this day, under different denominations. Those who opposed the absolute power, which the king now claimed, formed soon afterwards what was known by the name of the *country-party*, and received the powerful aid of the Puritans. The *court-party* were principally composed of the clergy of the established church, those also who enjoyed offices under the crown, and the vast body of Catholics, which secretly lurked in the kingdom.† But as, happily for the English nation and their descendants in America, those who advocated

* Rapin's Hist. (Tindal's edit.) vol. 8, p. 191.

† Rapin's Hist. (Tindal's hist.) vol. 8, p. 182. Hume's Hist. note (LL) to ch. 48.

the rights of the people, as exercised by their representatives in parliament, finally prevailed, so even, throughout the remainder of the reign of James, they found themselves able to maintain that firm position which they had now taken in support of their religious as well as civil and political liberties. For the reasons before suggested, it became necessary, in their estimation, that the English Catholics, who certainly were but a minor part of the nation, should yield up their religious rights, when the enjoyment of them became manifestly incompatible with those of a majority of the people. It was in this state of things, that parliament now pressed the execution of the laws heretofore made against them.

SEC. IX.
1621.

But James was too tenacious of what he deemed his prerogative, to give way so readily. Soon after he had prorogued and dissolved parliament, in order to please the king of Spain, and to promote the projected match between his son and the infanta, in defiance of the law, as well as the before mentioned remonstrance of the commons, he issued writs to the judges and justices of the peace, to release all the imprisoned recusants. Deeming himself head of the English Church, and thereby possessed of supreme ecclesiastical power, he wished to have it considered, that the toleration of Catholics was a measure of that nature. But not only the religious Puritans murmured at this proceeding of the king; the friends of civil liberty were alarmed at so important an exertion of prerogative: for it does not appear to have been definitively ascertained, at this period of time, whether the king had not a power of dispensing with penal statutes.* This last session of parliament, however, appears to have formed a crisis, from which the declension of the royal prerogative under the English constitution is manifestly visible, as the Catholics had, prior to this period, by the patronage of the king, gained such an evident ascendancy in their influence in the affairs of the nation, as to render the situation of the Puritans so uncomfortable, as to prompt them to emigration, so now the Puritans, in their turn, through the increased power and privileges of the house of commons, of which many of them, or at least many of those who inclined much to favour them, were mem-

* Rapin says, that some stop was put to these dispensing mandates or writs of the king, by the advice of the lord keeper, Williams. Rappin's Hist. (Tindal's edit.) vol. 8, p. 261. But this was subsequent to the period of time we now speak of, and at the time of the ratification of the Spanish treaty of marriage, in 1623.

SEC. IX. bers, began to be enabled to retort upon the Catholics, their own intolerant system. By their clamours for a vigorous execution of the laws against Papists, it became now necessary for them also to look about for a place of refuge.

1621.

First
scheme of
a colony
of English
Catholics,
in New-
foundland,
under the
patronage
of Sir
George
Calvert.

It was in this situation of things, that Sir George Calvert, who was now one of the principal secretaries of State, and of the Roman Catholic religion, influenced probably by the recent example of the emigration of the Puritans to New England, contemplated a settlement of Catholics in Newfoundland. As this nobleman was subsequently the founder of the colony of Maryland, it would be highly desirable to give a satisfactory sketch of some of the minutiae of his life; but as the historians, who have touched upon the affairs of his two colonies, have been sparing in their accounts of either his character or his life, and the few American biographers, who have briefly mentioned him, have given barren and contradictory accounts of him, it is impossible, at this day, to gratify the reader with many interesting incidents relative to him. He is said to have been descended from a noble family in Flanders, but he himself an Englishman, born at a place called *Kipling** in Yorkshire, England, in the year 1582. It appears that he received or finished his education at Trinity college, Oxford; where he took his bachelor's degree in the year 1597, having manifested some proficiency in literature, especially the classics, by writing and publishing in the preceding year, a Latin poem, entitled, "*Carmen funbre in D. Hen. Untonum.*" After receiving his diploma at Trinity college, he set out to the continent on his travels, and made the tour of Europe; as is still the usage of young men of fortune and family in England; from which we may infer, that either he or his parents then possessed a considerable estate. At his return to England, which is said to have been "in the beginning of the reign of James the first,"† he obtained the place of one of the under secretaries or clerks in the office of Sir Robert Cecil, who had been one of the principal secretaries of state at the death of Elizabeth, and who, by artful management, had contrived to be continued in that office by king James. After passing some years in this subordinate

* No place called *Kipling*, (said to be the birth place of Sir George Calvert, as above mentioned, in both Belknap's and Allen's Amer. Biog. Dict. Art. Calvert,) appears on any map or in any common description of Yorkshire. It may therefore be supposed to have been erroneously written or printed for *Ripley*, which is a small town in the West Riding of Yorkshire.

† James the first was proclaimed at London on the 24th of March, 1602-3.

situation, as it would appear, so as to make himself well acquainted with the business and affairs of state; Sir George obtained the king's favour so far as to be made one of the principal secretaries of state in the room of Sir Thomas Lake, in the year 1619, prior to which he had received the order of knighthood.* His knowledge of public business and his diligence and fidelity conciliated the regard of the king, so as to induce his majesty to bestow upon him the further bounty of a pension of a thousand pounds out of the customs. Shortly after his promotion to the high office of being one of the principal secretaries of state, he obtained a seat in parliament as one of the representatives for Yorkshire, at this present session of 1620-1, (of which we have been just speaking,) through the friendship, as it is said,† of the celebrated Sir Thomas Wentworth, who was afterwards earl of Strafford. Although this fact may be true, and a personal friendship might have then subsisted between Sir Thomas and Sir George, being both (or their families,) natives and residents of the West-Riding of Yorkshire,‡ yet they certainly pursued, at this period of time, (especially in the session of 1620-1,) very different politics. Sir Thomas Wentworth himself was one of the most active members, and one of the most able and zealous *anti-courtiers*, both at this session and in the preceding one of 1614. Sir George Calvert was now one of the principal secretaries of state, as just mentioned, and, as we may presume, did not, or indeed could not with propriety while he retained his office, act in any other way than in conformity with the wishes of the king. From the well known temper and disposition of James, he could not have retained the favour of that monarch, which he seems to

* Chalmers, in his *Annals*, (ch. ix.) says, that Sir George Calvert was made Secretary of State to James the first, through the *interest of Sir Robert Cecil*. But as Sir Robert Cecil, (created Earl of Salisbury in 1605,) died in 1612, and Sir George was not made secretary until 1619, there seems to be an inaccuracy in his statement. Chalmers possibly meant, that he was first originally patronised and introduced at court by Cecil as above mentioned. He had not been knighted at the date of the second charter of Virginia, (to wit, May 23d, 1609,) as he is therein named George Calvert, esquire, being one of the patentees.

† Chalmers, *ibid*.

‡ As the small town called *Ripley*, (which we have above supposed to be the birth place of Sir George Calvert,) and Wentworth castle, or the manor of Wentworth, the ancient family seat of the Wentworths and earls Strafford, are both situated in the West-Riding of Yorkshire, there might have arisen from that circumstance an intimacy between Sir Thomas Wentworth and Sir George Calvert, and perhaps their families. Thomas was a baronet, but Sir George only a knight.

SEC. IX. have done to a great degree, without a thorough compliance with his views.

This session of 1620–1, which is deemed by historians to have formed a remarkable epoch in the progress of the English constitution, must have presented difficulties to Sir George, particularly in his double capacity of a new member and a secretary of state, which would put in requisition all his best talents. Besides the formidable stand now made by the house of commons against the king's prerogative, two subjects more immediately affecting the interests of the British colonies in America, came into debate for the first time in parliament:—the *tobacco trade* and the *fisheries*. It does not appear, that Sir George Calvert took any part in the debate on the former subject. Not entertaining, at that time, any idea of his Maryland colony, he probably felt indisposed to intermeddle in an affair, which the king deemed to be peculiarly appropriated to his own jurisdiction and management. His colony of Maryland, however, subsequently became as much interested in the subject as Virginia; and it would, therefore, perhaps be improper to pass over it here altogether unnoticed. Sir Edwin Sands, before mentioned as treasurer of the council and company of Virginia, was also a member of parliament at this session, and being chairman of a committee of the house, “for inquiring into the decay of trade,” reported as one of the causes of it, “the importation of Spanish tobacco.” Instead of the returns from Spain being in bullion or specie, they were in tobacco, evidently to the great injury both of England and Virginia; to the injury of the former by excluding the importation of specie, and of the latter by excluding from the mother country the staple commodity of the colony. “The remedy,” which he therefore proposed was—“to supply Great Britain with tobacco out of Virginia and the Somer islands; and to prohibit all other tobacco.” Nothing could be more reasonable than this proposition; yet it admitted of considerable debate. Upon the question of prohibiting the importation of foreign tobacco, it seems, there was “not one negative;” but towards the encouragement of it from Virginia and Bermudas several circumstances combined to prevent any legislative act upon the subject. In the first place, it was well known that the king had a most inveterate aversion to the use of tobacco in any way; and a member, (Sir J. Horsey,) in the course of the debate observed,—“He thought not to speak of this *vile weed*. When he was first a parliament-man, this *vile weed* was

not known. Thousands have died of this vile weed. He ab- SEC. IX.
 hored it the more, *because the king disliked it.** It was prohibited to be used in ale houses. It was no good ground," (that is staple of trade,) "for Virginia." Another reason for the unwillingness of the courtiers to act upon the business, was, that the king, being at this time extremely anxious for the marriage of his son with the infanta, would not assent to any prohibition of a Spanish commodity, lest it might give offence to the king of Spain. A third and powerful reason was, that the king affected to consider all regulations of every thing respecting colonies as under his peculiar direction, and not the subject of any attention of the house of commons.†

In the debate on the *fisheries*, (which occurred in a few days after the former,) Sir George, it seems, thought himself more peculiarly interested, or felt himself more at liberty to act in coincidence with the king's sentiments. As the South Virginia company, or First Colony, as it was called, had, since the first charter of 1606, by which the continent of North America had been placed under two distinct companies, under the denomination of the First and Second colonies, obtained two other distinct charters to themselves, while the North Virginia or Plymouth company, or Second colony, had continued to act under the first one of 1606, some enterprising members of the latter company, particularly Sir Ferdinando Gorges, with others, petitioned the king, "to make certain adventurers, intending to erect and establish fishery, trade, and plantacion, within the territories, precincts, and lymits of the said Second colony, and their successors, one several, distinct, and entire body, and to grant unto them, such estate, liberties, privileges, enlargements, and immunities there, as in the letters patent are therein particularly expressed and declared." King James, who had a passion for colonization, readily acceded to their proposals, and

* The king, besides his several proclamations against the growth, importation, or use of tobacco, published a treatise also against it, entitled, "A counterblast to [tobacco." One [of his "Witty Apothegms," as published in a collection of them, was—"Were he to invite the devil to a dinner, he would have three dishes: first, a pig; second, a poll of ling and mustard; and third, a *pipe of tobacco* for digesture." Grainger's Biog. Hist. and the Annual Register for 1769, p. 33.

† This debate occurred on the 17th and 18th of April, 1621.—See it in Chalmers's Annals, ch. iii. note 17; who remarks upon it, that "it is the *first instance* which occurs, of the modern policy of promoting the importation of the commodities of the colonies, because they were countries under our dominion," in preference to the productions of foreign nations.

SEC. IX. granted the letters patent to the duke of Lenox and others, bearing date November 3, (18 Jac. 1,) 1620.* This grant comprehended all the northern part of the continent between forty and fifty-eight degrees of north latitude, under the denomination of New England; and, among other "privileges, enlargements, and immunities," granted to them power and authority "to attach, arrest, take, and seize all ships and goods whatsoever, which should be brought from or carried into the territories, lands, rivers, and places thereby granted, unless it be by the licence and consent of the said company first had and obtained in writing, one moiety of such forfeitures to be to their own use, the other moiety to the king."† As this grant extended to 48°, it included nearly the whole of the coast of Newfoundland adjacent to the banks thereof. It being necessary for vessels, engaged in the fishery on those banks, to have liberty to land on the coast, not only to dry their nets, and salt their fish, but for procuring wood and water, the patentees availed themselves of a construction, which this clause admitted, of prohibiting those engaged in the fishery from using their coasts as above mentioned. This affecting the interests of the nation became an object of the national legislature. A debate accordingly took place on it, on the 25th of April, 1621, in which Sir Edwin Sands, (treasurer of the South Virginia company, as before mentioned,) after stating the grievance, moved "that a free liberty should be allowed to all the king's subjects to fish there. That the taking of timber was no prejudice to the colony. It was pitiful, that any of the king's subjects should be prohibited, since the French and Dutch were at liberty, who would come and fish there, notwithstanding the colony. That this New-England company now prohibit the taking of timber where it is nothing worth, and take away the salt the merchants leave there.

"Mr. Secretary [Calvert]:—Doubted the sub-committee had not heard the other part;—doubted whether the fishermen were not the hinderers of the plantation. That they burn great store of

* It may be noticed here, that it could not be known in England, at the time of this charter, that the colony of puritans from Leyden, before mentioned, who had left Southampton in England, about two months prior to this, (viz: on the 6th of September, 1620,) would have settled within the limits of this grant, having taken with them authority under the South Virginia company, within whose limits it was intended they should settle.

† See this patent at large in Hazard's Collections, vol. 1, p. 103.

woods, and choke the havens. He never would strain the king's prerogative against the good of the commonwealth. It was not fit to make any laws here for those countries, which were not as yet annexed to the crown.*

“Mr. Neale:—Three hundred ships at least gone to Newfoundland out of these parts,” (meaning, according to Mr. Chalmers, the *west* of England.) “That this complained of heretofore to the lords of the council. London engrosseth all trades and places. That the patentees for this northern plantation, intended for the public good, intend their private; which hurteth the commonwealth. Second Edward VI. free liberty for all the subjects to go to the Newfoundland for fish:† Now make men compound for places: Take away their salt. They cannot carry even proportion; but must either leave or lack. That the fishing there little above seven weeks. No leisure to attend an admiral court. Pretence to reform abuses; but was to set fines. Taxed a hogshead of train-oil on every master of a ship that appeared not at his court.‡ That the lords of the council gave an order against this, which those planters have disobeyed. Enacted great sums, and shot off ordnance against the king's subjects. That London merchants, by restraining trade, undo all trade. That many things may be added to this bill: casting out ballast, &c.

* Mr. Chalmers, in his *Annals*, (ch. iv. p. 84,) has thus paraphrased this speech of Sir George Calvert.—“That those foreign countries are not yet annexed to the crown of England, but are the king's, as gotten by conquest; and, therefore, in such new plantations the king may govern as his majesty shall think fit; that the fishermen, for whose advantage this bill only provideth, are the true cause of the disorder in those parts, by destroying the woods, and casting ballast into the havens. And he recommended to the consideration of the house, whether we shall here make laws for the government of those parts.”

† This alludes to the statute of 2 & 3 Edw. VI. ch. 6, before stated in the Introduction, p. 39.

‡ This grievance arising from an admiralty-court must have been under a court of that nature erected by the council of Plymouth, under their charter of November 3d, 1620, and held by some judge acting under their appointment and authority in Newfoundland. A clause in that charter “granted power and authority to the council to nominate and constitute all such officers and ministers as should be by them thought fit and needful; and also to make, ordain, and establish all manner of orders, laws, directions, instructions, forms, and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said colony and plantation, not only within the precincts of the said colony, but also *upon the seas* in going and coming to and from the said colony.” Under a similar clause in the charter of Maryland a court of admiralty was subsequently erected in that province, as will appear in a subsequent part of this History.

SEC. IX. "Mr. Guy:—If this house hath jurisdiction to meddle with this bill, would consent to the proceeding thereof. That there are divers patents. He engaged for the plantation of Newfoundland.* The Londoners in this to be commended, however their greediness in other things justly found fault with. That the king hath already done as much by his great seal as can be done here by this act. That the French planted there about thirty years sithence.† That provision made, the fishermen might have timber there. That the plantation ever furthered our English merchants. Moveth that the pirates may be repulsed, if any come thither;‡ and this to be provided for by the bill.

"Mr. Brooke:—That we may make laws here for Virginia; for, if the king give consent to this bill passed here and by the lords, this will control the patent. The case divers for Gascoyne, &c., which principality of themselves. To commit it.

"Sir Edwin Sands:—That Virginia holden of the manor of East-Greenwich."§

This debate is not stated here with any thought of its having a forcible bearing on the great subsequent question of dispute between the colonies and Great Britain, but with a view to illustrate the tenor of Sir George Calvert's political principles, as well as his ideas of colonization; which principles and ideas we may suppose him to have retained, when he afterwards under-

* This appears to be the same Mr. John Guy, a merchant, and afterwards mayor of Bristol, before mentioned, (see the Introduction, p. 163,) who is said to have revived the spirit of colonization about the year 1610, by several sensible treatises, which he wrote upon that subject. He had the chief agency in procuring the patent to Henry Howard, earl of Southampton, and others, including himself, as before mentioned; and also visited Newfoundland with a view of settling a colony there, but without success.

† It is said by Oldmixon, (Brit. Emp. in Amer. vol. 1, p. 6,) that the French did not settle themselves in Newfoundland, until the reign of Charles the second. But as the French are said, by Hakluyt, (according to Holmes's Annals, anno 1591,) to have sent a fleet of ships from St. Malves, in France, for Canada, in that year, and that they were, at that time, accustomed to fish at the islands about the bay of St. Lawrence for morses or sea-cows, it is possible they might have then commenced some settlements in those islands, to which Mr. Guy may here allude.

‡ In the year 1611, one Peter Easton, a noted pirate, visited Newfoundland, for planting, as we may suppose, and not for fishing. He prevailed on captain Whitburne to apply for a pardon for him, as he wished to return home to England; but not succeeding, he entered into the service of the duke of Savoy, since entitled king of Sardinia. Oldmixon's Brit. Emp. in Amer. vol. 1, p. 4. Smith's Virg. vol. 2, p. 231.

§ See this debate stated as above by Chalmers, (in his Annals, ch. iv. note 14,) who cites the journal of the house of commons, of the 25th of April, 1621.

took the settlements of his colonies of Avalon and Maryland. SEC. IX. Although the writer, from whom this debate is taken, seems to have considered Sir George, on this occasion, as a strenuous advocate for "the royal prerogative;" yet, if we give credit to Sir George's own assertion, "he was not for straining that prerogative, against the good of the commonwealth." He seemed also to deny the right of parliament to legislate for the colonies; but for a reason, it is true, very different from those, on which the colonies afterwards went, in our day, in resistance to that power. It is certain, that king James had taken up an idea, that all colonies, planted by him in America, were under his own special superintendence. Like Gascony formerly, and other countries gained by conquest, they were not to be considered as a part of the realm of England, and therefore not subject to the legislation of an English parliament, any more than Scotland or Ireland. It is easy, however, to see the mischief of this principle; for, if the colonies were not under the *protecting* hand of parliament, they were left to the lawless mercy of such a prerogative as king James pleased; which had become, as Sir Edward Coke then termed it,—“an overgrown monster.”* But Sir George Calvert, as might be expected, fell into the king's views of this subject; and the reader will perceive, when he comes to peruse the charter of Maryland, which is supposed to have been the production of Sir George's own pen, a mixture therein of the people's right to legislate for themselves, with a reservation of the proprietary or royal prerogative, of governing solely by his own *ordinances*. Although the bill to remedy the grievances here complained of, relative to the right of fishery, regularly passed the house of commons, yet, as the learned annalist, from whom we have taken the preceding extract,† states,—“owing to the reasons suggested by the secretary of state, (Calvert) it did not become the law of the realm;” either not being passed by the house of lords or rejected by the king. As this right to a free fishery in America, through the influence of this debate, and a subsequent one on the same subject, hereafter to be noticed, occasioned a clause of reservation of the right to the subjects of England and Ireland to be inserted in

* Sir Edward got himself imprisoned by this very expression. His papers were seized, and the door of his chambers in the temple sealed up, in a few days after the dissolution of this parliament, in January, 1621, O. S.

† Chalmers's Annals, ch. iv. p. 84.

SEC. IX. the charter of Maryland, in 1632, as well as in some other charters, further remarks on it will be postponed to a future occasion.

As most of the historians relative to America, who have mentioned Sir George Calvert's province of Avalon in Newfoundland, vary in the date which they affix to his patent or grant thereof, and consequently in the time or year of his settling a colony therein, we are at liberty to select that which seems to have the surest foundation. Some have set down the date of his grant to have been in the year 1620, and the settlement in 1621. Others expressly state the settlement to have been in 1622, leaving an inference, that the grant was in the preceding year. But, as the original charter or grant, or an authentic copy thereof, is still extant in the British Museum, and, as stated in a publication of apparent authenticity, bears date the—"21 A. R."—meaning, without doubt,—“the twenty-first year of the king,”—its date must be referred to the year of our Lord 1623.* This

* Oldmixon, in his *Brit. Emp. in Amer.* vol. 1, pp. 4, 5, thus speaks of this grant,—“This gentleman,” (Sir George Calvert,) “being of the Romish religion, was uneasy at home, and had the same reason to leave the kingdom, as those gentlemen had, who went to New England, to enjoy the liberty of his conscience. He therefore resolved to retire to America, and finding the Newfoundland company made no use of their grant, he thought of this place for his retreat; to which end he procured a patent for that part of the island, that lies between the bay of Bulls in the east, and cape St. Mary's in the south, which was erected into a province, and called Avalon. Sir George sent over persons to plant and prepare things for his reception; and in 1621, capt. *Edward Wynn* went thither with a small colony at Sir George's charge, who seated himself at Ferryland.”—With this historian, the authors of the *Mod. Univ. Hist.* (vol. 39, p. 249,) seem to agree, as they generally do on other occasions, as far as his account of the colonies extends. Chalmers, (in his *Annals*, ch. ix.) states, that “in the year 1622, Sir George Calvert established a small but flourishing settlement at Ferryland, (in Newfoundland,) which he governed by his deputy, and which he visited in person in the beginning of the reign of Charles I.,” for which he cites Purchas's *Pilgrims*, 42, and the letters of Sir George Calvert in the *Strafford papers*. This seems in some measure to coincide with the preceding account by Oldmixon; and it is further stated in the *Mod. Univ. Hist. ibid.*, that “in 1622, capt. Wynn was reinforced with an additional number of colonists;” when the settlement might be considered as “established,” as Chalmers states.—Notwithstanding these authorities, however, in an “Extract from the catalogue of MSS, relative to America, preserved in the British Museum,” which extract is inserted in the *Bibliotheca Americana*, (a work published in London, in the year 1789,) one of these MSS, is stated as follows:—“*Charta Avaloniæ*, or Charter of Avalon, granted by king James, 21 A. R.”—Whether this be the original charter, or a manuscript copy of it, is not stated in the catalogue. But, if the figures and letters,—“21 A. R.”—are accurately printed, they must mean, the twenty-first year of the king; which would make the date of the charter to have been in the year of our Lord 1623. In corroboration of this state of the Charter of Avalon, may be cited the *Geographical Grammar* of Patrick Gordon, published in 1719, a

grant was, apparently, in direct repugnance not only to that previously made by the king in 1610, to the earl of Northampton and others, as before mentioned,* but also to the grant then recently made to the duke of Lenox and others, in 1620, under the denomination of New England; which latter grant extending as high up as the forty-eighth degree of north latitude, must have comprehended the whole of Sir George Calvert's Province of Avalon. As the settlement attempted by Mr. Guy, under the first mentioned patent of 1610, totally failed, and the patentees had to all appearance entirely relinquished their intention of making any further use of their patent, Sir George might, perhaps, see no impropriety in accepting a re-grant of the same territory. Whether the collision between his grant and that of New England in 1620, produced any dispute, we are not informed. The surrender of the New England patent, in the year 1635, must have relieved him from such interference. Notwithstanding these prior grants, Sir George prepared to execute the purposes and intention of his patent. Previous, however, to his own embarkation for the country granted to him, he thought it most proper for him to send a small colony thither, under the command of a captain Edward Wynne, as governor, who seated himself and colonists at a place called Ferryland, a harbour on the east coast of Newfoundland, between Cape Race and the Bay of Bulls. Here he commenced a settlement, erected granaries and storehouses, and built the largest dwelling house that had ever been seen on the island. In the following year, (which, supposing the date of the patent to have been in 1623, must have been in 1624,) Governor Wynne had the encouragement, through the interest and means of the proprietor, of receiving a reinforcement to his colony, by the arrival of an additional number of colonists and fresh supplies of stores and provisions. Exaggerated ac-

work which has been always deservedly held in high estimation by literary men. He therein, under the head of Newfoundland, thus speaks of its government.—“In the year 1623, Sir George Calvert, principal secretary of state, having obtained a patent for a part of Newfoundland, erected the same into a province, (called Avalon,) and therein settled a plantation; which after him was enjoyed by his son Cecilius Lord Baltimore.”—It ought not, perhaps, to be omitted, that immediately preceding the foregoing statement of the charter of Avalon, in the *Bibliotheca Americana*, mention is also made of another MS. therein, entitled,—“Account of the Settlement of Newfoundland, by Sir George Calvert;”—but the catalogue does not state any date, either of the time when that “Account” was written, or when the settlement, of which it treats, took place.

* See the Introduction, p. 189.

SEC. IX. counts of the fertility of soil and pleasantness of the country having been transmitted to Sir George, he was induced soon after to visit his colony in person.*

It cannot with evident certainty be stated, that Sir George Calvert, in the settlement of either of his provinces, Avalon or Maryland, had in view the formation of an asylum for English Catholics; although it is so stated by several historians, as before mentioned; such intention of his being no where clearly expressed by himself, unless it be in the before mentioned MS. account of Avalon, by Sir George himself, still remaining in the British Museum; of the contents of which, we have no opportunity of examining. With regard to Maryland, the fact, ascertained in history, as well as in the records of the province, that most of the first colonists of that province were Roman Catholics, leaves a strong inference, that it was the original contemplation of Sir George thereby to erect for such Catholics a place of refuge. In respect to Avalon, however, we have not this fact, as a ground for such inference. But, as one of the earliest historians of Newfoundland attributes Sir George Calvert's design, in planting his colony of Avalon, to the desire of making "a place of retreat" for English Catholics, in which he is followed by other subsequent historians,† such motive being founded on strong probability, may be safely admitted. Other causes of influence on the conduct of Sir George on this occasion, might also have had some operation. Colonization, in the reign of king James, might be called the fashion of the day. It took its style and shape from the monarch himself. He had high ideas of his talents for legislation and government, and appeared to amuse himself in the gratification of this passion, by planting colonies in the thinly populated parts both of Scotland and Ireland. It was natural, therefore, for Sir George Calvert, as well as most others of the great men of the kingdom, as they actually did, engage with zeal in these speculative schemes: although, as we are told, speculative reasoners, even during that age, foretold, that they were then laying the foundation of an independent

* See Oldmixon and the Mod. Univ. Hist. as before cited. The dates above mentioned correspond also with what is stated by Chalmers, as before cited,—that Sir George visited his colony in person, in the beginning of the reign of Charles the first, which commenced in 1625.

† See Oldmixon's Brit. Emp. in Amer. vol. 1, p. 5, and the Mod. Univ. Hist. vol. 39, p. 249.

government in America.* Sir George Calvert, however, had SEC. IX. certainly no such design in view.

For further illustration of Sir George's political principles and character, as well as his ideas of colonization, but more particularly because the right of free fishery became a question of importance in the civil policy of Maryland, as before suggested, it will be proper to renew our attention to the debate on that subject, which took place at the next session of parliament, of which Sir George still continued a member.†—On the total disruption of the proceedings of the Spanish match, and the return of Prince Charles and Buckingham from Madrid, that minister, with the aid of the prince prevailed on the king to call a parliament, which assembled on the 19th of February, 1623–4, old style. The patent before mentioned, granted to the duke of Lenox and others, having been referred to the committee of grievances,‡ Sir Edward Coke, from that committee, made a report thereon to the house, which brought on the following debate:

“17th March, 1623–4.—Sir Edward Coke reporteth from the committee of grievances. Have condemned one, viz. Sir Ferdinand Gorges his patent for a plantation in New England. Their counsel heard; the exceptions being first delivered them. Resolved by consent; that, notwithstanding the clause in the patent, dated 3d Nov. 18th Jac. that no subject of England shall visit the coast, upon pain of forfeiture of ship and goods, the patentees have yielded, that the English fishermen shall visit, and that they will not interrupt any fishermen to fish there: For, he no new discoverer; fishermen of this and other nations having fished there before his patent. Drying of nets, salting their fish, &c. incident to their fishing: Whereunto he also agreed. After he was gone after the debate, overruled the fishermen might take timber for repair of their ships: 1st, Quia incident; 2d, taken so before his patent; 3d, fishermen never take

* See Hume's Hist. of Eng. Appendix to the reign of James the first.

† It would seem, that at this session of parliament, he represented the University of Oxford, his *Alma Mater*.—Allen's Amer. Biog. Dict. art. Calvert.

‡ A proclamation, that had been issued by the king, November 6th, 1622, apparently to protect the above mentioned grant to the duke of Lenox and others, prohibiting sundry abuses therein mentioned, to wit, taking the timber of the planters, barking trees, and ruining harbours by casting out ballast, must have been also taken into consideration by the committee, with the above mentioned patent.—See the proclamation in Hazard's Collections, vol. 1, p. 151; and remarks thereon by Chalmers, in his Annals, ch. iv.

SEC. IX. any timber with them; 4th, bring in great store of money for fish.

“Resolved:—English fishermen shall have fishing with all incidents of drying fish, nets, timber, &c. 2dly, That the clause of forfeiture, being only by patent, and not by act of parliament, void.

“Resolved upon question:—That the house thinketh fit, the fishermen of England shall have fishing there, with all the incidents necessary, of drying nets, and salting, and packing.

“Upon the second question; in the opinion of this house, *una voce*, the clause of confiscation void and against law.

“Upon the third question;—in the opinion of this house, the fishermen of England may take necessary wood and timber for their ships and boats use in fishing there.”

“3d May, 1624.—The debate concerning the fishing in New England renewed.

“Sir Wm. Earle:—For the planters; who more beneficial to the commonwealth than the fishers.*

“A proviso, in parliament, tendered to this bill, which read.

“A second proviso tendered by Mr. Guy, which read.

“Sir Ed. Cooke:—Sir F. Gorges’s his patent condemned for the clause that none shall visit with fishing upon the sea-coast. This to make a monopoly upon the sea, which wont to be free. A monopoly attempted of the wind and the sun, by the sole packing and drying of fish.†

“Mr. Secretary:—That free fishery, prayed by this bill overthroweth all plantations in those countries. That liberty by this

* Sir William Earle certainly differed in opinion here very widely from that great political economist, Sir Josiah Child; who strenuously maintained, (as before suggested,) that it was better for Great Britain, that Newfoundland should not be planted with any colonies, as they would be prejudicial to the fishery. Events seem every day developing themselves to demonstrate the truth of another position of Sir Josiah Child; to wit, that New England itself, as a colony, was, even in the year 1689, when he wrote, of greater injury than benefit to the mother country.

† Sir Edward Coke’s animosity to *monopolies*, (though very proper,) was, without doubt, whetted by his late imprisonment immediately after the last session, as well as by his previous removal from his chief justiceship in 1616. He had not always been of the same opinion on this subject, as appears from his argument in the remarkable *case of monopolies* in 44 Eliz. when he was attorney general, reported by himself in 11 Co. 84, b. The true ground of controversy on the present occasion was,—whether the right to the soil and freehold by *grant* was to controul and take place of, the previous right to a free fishery established by *long usage* prior to such grant. The national interest, so dependant on the right of fishery, finally prevailed.

bill to cut down wood, within one quarter of a mile of a dwelling house; which exceeding prejudicial to the planters. So for SEC. IX. Newfoundland.

[Mr. Chalmers, from whose annals this debate is taken, here inserts the following "remark.—Sir George Calvert then possessed the territory of Avalon in that island, where he had planted a colony."]

"Mr. Glanville:—The first stage worth ten of the rest. The provision for timber in Newfoundland omitted; because, that an island having no rivers: But New England hath divers into it.

"Both the provisos upon question rejected. The bill upon question passed."

Although this bill passed the house of commons, as the former, at the last session, had done, yet, (as the annalist from whom the extract is made,* observes,) "the influence of prerogative still existing, it met with its former fate, and became not a law."

The parliament were also much engaged, during this session, in other business, still less agreeable to Sir George, and in which, probably, he took no part. Both houses of parliament still labouring under uneasiness and jealousies relative to the Spanish match, and the great encouragement of papists at court, presented a petition to the king, in which, among other things relative to popery, they requested,—"that all papists should be removed from London and the court." As this would necessarily imply also a removal of all papists from offices and places of trust, in and about the king and court, the remark of *Rapin* on this petition may be here quoted.—"Had the king consented to this request, the face of the court would have been entirely changed. The duke of Buckingham's mother, who, by her son's means, disposed of all offices, must have been removed. His dutchess would also have been of the number; as well as *one of the secretaries of state.*"† Soon after the petition the parliament caused also a list of fifty-seven *popish* lords and knights, who were in public offices, to be presented to the king. The only two principal secretaries of state, at this time, were Sir George Calvert and Sir Edward Conway.‡ The latter is expressly stat-

* Chalmers's Annals, ch. iv.

† Rapin's Hist. Engl. (Tindal's edit.) vol. 8, p. 281.

‡ Sir Robert Naunton, having given some offence to Buckingham, was removed from his office on the 14th of January, 1620-1, (O. S.), and Sir Edward Conway then put in his place. Rapin's Hist. Abridg. vol. 2. p. 206.

SEC. IX. ed to have been a protestant.* So that Sir George Calvert must have been most probably included in this list, and one of the principal objects of this petition. Although the king was certainly more condescending and gracious to this parliament, than he had ever been to any before, and in his answer to this petition had been induced to play the hypocrite so far as—"to protest before God, that his heart had bled when he had heard of the increase of popery; and that he would command all his judges to put all the laws in execution against recusants;"—yet it does not appear, that any removals from office on this account, at least with those about the court, took place during the short remainder of his reign. It is stated, however, by some American biographers, who mention Sir George Calvert, that "in 1624 he *became a Roman Catholic*, and having disclosed his new principles to the king, resigned his office."† That Sir George did not, prior to the year 1624, or perhaps prior to the death of the king, which happened about the end of that year, according to old style, openly avow himself a Roman Catholic, is highly probable, inasmuch as he thereby would have rendered himself obnoxious to the prejudice and animosity of the majority of the nation, in his two great trusts of secretary and member of parliament. But his zeal from the time of his first appointment to the office of secretary, in promoting the marriage of the king's son prince Charles with an infanta of Spain, connected with his subsequent avowal of that religion, seems strongly to imply, that he acted in that business willingly, and not merely under the orders of the king. On this subject also, he seems to have fallen in with the views of count Gondemar, the Spanish ambassador at London, in so open a manner, as to induce historians to enrol him in the list of those, who were bribed by that minister.‡ But in justice to Sir George, it is fair to impute his conduct, relative to the Spanish match, rather to the more probable motive of a zeal for the interests of the Catholic religion, connected with

* Rapin's Hist. (Tindal's edit.) vol. 8, p. 159.—Rapin, however, in a subsequent part of the same vol. p. 409, states him to have been a *Catholic*. But it is most probable, that he alludes in the above quotation, to Sir George Calvert.

† *Allen's Amer. Biog. Dict. art. Calvert*; who seems to have copied the article from *Belknap's Amer. Biog.*

‡ Rapin, in his Hist. of Eng. (Tindal's edit.) vol. 8, p. 167, says, that "count Gondemar had bribed with presents and pensions all those who had the king's ear," and in a note thereto subjoins,—“particularly the earls of Worcester and Arundel, the lord Digby, Sir *George Calvert*, Sir Richard Weston, and others *papishly affected*;"—for which he cites *Wilson's* life of James I.

an amiable desire of demonstrating his gratitude to a monarch, SEC. IX. who had rendered him so many favours as king James had done,* than to the dishonourable influence of a bribe. It is not probable, therefore, that the principles of the Catholic religion were newly adopted by him in 1624. He must have been tinctured with a propensity to that religion long before.

As the king's favorite minister—the duke of Buckingham, in order to gratify his revenge against the Spaniards for some affronts supposed to have been received by him when at Madrid, is said to have colleagueed with the Puritans, or a least with some zealous Protestants, for the more rigid execution of the penal laws against papists, to which the king was induced to yield, it is highly probable, that Sir George Calvert, seeing a more threatening storm than usual, rising against the Catholics, began to prepare his mind for a retirement from the public scenes of life. He had long been interested in the affairs of the colonies, having been one of the original associates or members of the Virginia company under the second charter in 1609,† and so continued until its dissolution in 1624,‡ which must have been within a few days after the prorogation of this present parliament on the 20th of May this year. On the dissolution of the Virginia charters, it being necessary to provide some other mode for the government of Virginia, a commission issued, bearing date the 15th of July, 1624, to Henry Viscount Mandeville and others, among whom is mentioned,—“Sir George Calvert, knight, one of our principal secretaries of state,” and who was also to be one of the *quorum* of a *provisional council* in England thereby erected for the temporary government of Virginia, until his majesty could “upon advised consideration and deliberation” pass a new charter.§ Thus invested among others with the superintendence of the principal colony in America, his mind must have been frequently called to a more than ordinary atten-

* From the like motive might have originated with him, as it is said to have done, the project of settling the affairs of the elector Palatine, a Protestant and James's son-in-law, by marrying his son—the prince Palatine, James's grandson, with a daughter of the emperor of Germany, who was a Catholic.—See Rapin's Hist. (Tindal's edit.) vol. 9, p. 180.

† His name appears, as one of the patentees in that charter, in a large list of the nobility and gentry of England.

‡ The writ of *Quo Warranto*, against the Virginia charter, issued in November 1623, and judgment was given by the court of K. B., against the treasurer and company, in Trinity term, (about the latter end of May,) 1624.—Chalmers's Annals, ch. iii. and ix.

§ See this commission at large in Hazard's Collections, vol. 1, p. 183.

SEC. IX. tion to the business of forming plantations in America. He was now also, as has been before stated, engaged in planting a colony in Newfoundland, and, having received the most flattering, though delusive, information of its prosperous progress, he might probably about this time have formed his intention of retiring from the disagreeable scenes of England, to pass a few years of quiet enjoyment of his religion in the woods and forests of America.

Having thus traced Sir George's public life to the middle of the year 1624, when we find him still continuing in his various public offices, it will be proper to observe, that, notwithstanding the preceding allegation of Sir George's "disclosure of his new principles to the king and resignation of his office in that year," it has been on the contrary stated, with apparent authenticity, that he continued to be one of the principal secretaries of state, until the death of king of James,* which occurred on the 27th of March, 1625, only three days after the expiration of the year 1624, according to old style. It is possible, however, that he might have resigned his office of secretary in the latter part of the year 1624, at some short period before the death of James, and at the same time, considering the circumstances of the times and the inveteracy of the majority of the nation against the Papists, he might have assigned to king James this general national prejudice as his reason for so doing: But it is not probable, that king James had been hitherto a stranger to his religious sentiments.

On the death of James and the accession of Charles to the throne, it seems to be certain, that Sir George ceased to be one of the secretaries.† It is highly probable, that on his retirement from office, whenever that event was, he received his diploma of nobility; being created baron of Baltimore in the kingdom of Ireland. But to this circumstance of his life also different dates are annexed; and we have not, on this side of the Atlantic, the means of correcting such errors. According to some he was created lord Baltimore in the year 1623;‡ but this seems to

* Chalmers's Annals, ch. ix. who cites a commission in *Rymer's Fœdera*, in opposition to what (he says) "was mistakingly said (to that purpose) in the Miscellaneous State Papers (then) lately published."

† Sir Edward Conway, now became lord Conway, and Sir John Cooke are mentioned as secretaries of state in August, 1625, about five months after the death of king James. Rapin's Hist. of Eng. (Tindal's edit.) vol. 8, p. 333.

‡ In the list of the peers of Ireland from the reign of Henry 2d, to the year 1806, in the order of their creation, in *Beatson's Political Index*, (vol. 3, p. 147.)

be plainly contradicted by the commission just mentioned, of SEC. IX. July 15th, 1624, in which he is styled by the king himself—"Sir George Calvert, knight," which title would certainly not have been used in such a commission, had he been then a peer. His American biographers seem therefore to be more correct, who state him to have been created baron of Baltimore in the year 1625;* when he most probably received this honour from Charles the first, shortly after the death of his father James, and Sir George's resignation of the office of secretary.

Disengaged from the important duties of the office of secretary, he had now leisure to attend to his project of establishing a colony in America. More accurately to ascertain the progress of that, which he had planted in Newfoundland, it was probably about this time, in the first or second years of the reign of Charles the first, that he first visited his province of Avalon.† It has been said also, that he removed thither with his family, and dwelt there some time.‡ But of this the dates are not to be accurately ascertained.

The natural order of time requires to recur again to the proceedings of parliament relative to the important right of American fisheries. The subject was revived as one of the grievances of the realm, at the second parliament which Charles convened after his accession to the throne, on the 6th of February, 1625-6. The bill for securing the right of fishery, which had engaged so much of the time and the attention of former sessions, was readily adopted by the present, but with a title more expressive of its genuine policy. An act "for maintenance and increase of shipping and navigation, and for the freer liberty of fishing voyages upon the sea-coasts of Newfoundland, Virginia, and New England," was brought in. It was soon passed by the commons, and sent to the lords; from whom, however, it never returned. Although the bill was thus lost, yet the commons, ever intent upon this among their several grievances, in their remonstrance to the king at this session, insisted,—“that

a work of some authenticity, Sir George Calvert is stated to have been created Baron Baltimore in the year 1623.

*Allen's American Biog. Dict. art. Calvert;—who appears to have copied it from Belknap's Amer. Biog. It is probable, that the similitude of the figures 3 and 5 have occasioned the mistake.

† Chalmers's Annals, ch. ix. for which he cites Purchas's Pilgrims, 4 v. and the letters of Sir George Calvert in the Strafford papers.

‡ Oldmixon's Brit. Emp. in America, vol. 1, p. 5;—who is followed in this by the authors of the Mod. Univ. Hist. vol. 39, p. 250.

SEC. IX. the restraint of the subjects from the liberty of a free fishing, with all the necessary incidents, was a great national grievance.”* At the next session of parliament, which assembled on the 17th of March, 1627–8, the same or a similar bill was revived in the house of commons; and it seems, that Sir George Calvert, now Lord Baltimore, feeling himself, in all probability, particularly interested in it, on account of his colony of Avalon in Newfoundland, thought it proper to apply for a hearing by his counsel against it. Notwithstanding what was urged by his counsel, the bill passed the house of commons; but, it is said “to have met with its accustomed fate,” and either failed in the house of lords or was rejected by the king. Although the commons were not so successful in this measure as they were in this same session in that of their famous petition of right, yet their perseverance is said to have produced such a variation in the modification of future grants of territories in America by the crown, as to secure to the people of England a satisfactory reservation of the important right, to them, of a free fishery; which seems to have been understood, not only as the right of fishing on the banks of Newfoundland, (a right reasonable enough in itself,) but on all other parts of the coast of British America, where it was supposed to be possible for extensive fisheries to be carried on. The charter of Massachusetts, bearing date the fourth day of March, in the fourth year of Charles I. (A. D. 1628–9, old style,) about a year after the preceding session last mentioned, contains an express proviso, that “these presents shall not in any manner enure, or be taken to abridge, barr, or hinder any of our loving subjects whatsoever, to use and exercise the trade of fishing upon that coast of New England in America by these presents mentioned to be granted; but that they, and every or any of them, shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast, in any of the seas thereunto adjoining, or any armes of the seas or salt water rivers where they have been wont to fish, and to build and set up upon the lands by these presents granted, such wharfes, stages, and work houses as shall be necessary for the salting, drying, keeping, and packing up of their fish, to be taken or gotten upon that coast; and to cut down and take such trees and other materials there growing or being or† shall be needful for the purpose,

* Chalmers’s Annals, ch. ix.

† It is so expressed in the copy in Hazard’s Collections, (vol. 1, p. 254,) but the context would seem to indicate the word *as* instead of the word “or.”

and for all other necessary easements, helps, and advantage, concerning their said trade of fishing there, in such manner and form as they have been heretofore at any time accustomed to do, without making any wilful waste or spoil." A clause, to the same purpose, was inserted in the charter of Maryland to lord Baltimore in the year 1632. As this clause has been supposed by some to form a foundation of certain rights alleged to exist with the citizens of Maryland to this day, and the construction of it has occasioned some litigation in the courts of justice of this state, even since its independence, it may not be improper to insert it here.—"Saving always to us, our heirs and successors, and to all the subjects of our kingdoms of *England* and *Ireland*, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down and take hedging-wood and twigs there growing, and to build huts and cabbins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy, without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction." A considerable variance is perceptible between these clauses of these two charters. That of Massachusetts reserves the right of fishery to *all the king's subjects*; but that of Maryland to those only "of *England* and *Ireland*." The "saving" in the latter, therefore, seems to exclude the rights of all the king's subjects in *America*, and thereby to refer only to the rights of public fisheries on the American coast carried on by English or Irish subjects. Why the subjects of other parts of the British dominions were excluded, does not clearly appear. It is probable, that lord Baltimore admitted it in the limited manner, as it is in his charter, only to prevent any clamours against his grant, arising on the popular topic of the day—the right of fishery; especially in En-

SEC. IX. gland and Ireland; of the former of which he was a native, and of the latter a peer; and he probably did not apprehend any objections on that account in either Scotland or America. Clauses almost literally similar to that of Massachusetts were inserted also in the charter of Connecticut in 1662, and in that of Rhode Island in 1663.*

Notwithstanding all must acknowledge, that the right of fishing on the banks of Newfoundland was a great national right, intimately connected with the maritime power of the English nation, and, as Sir Josiah Child very justly observed, ought to have occasioned a prohibition of any settlements or colonies on that island, and that the coast thereof should be reserved solely for the promiscuous use of fishermen; yet as to those coasts of the American continent more favorably fitted for colonization, where the right of fishery, if exercised in the mode contended for, would nearly effect the destruction of a right quite as important in every government or state,—the right of *property in the soil*, a mind accustomed to justice will hesitate much before it can be induced to assent to the proposition, that the latter right should yield to the former. In Massachusetts, it appears, that a law or laws confirming the rights of fishery with its incidents, was passed; but no act of assembly confirming this clause in the charter of Maryland, appears among the laws of that province or state. Its repugnance to some of the first principles of the *common law* of Englishmen and their colonists, in relation to the rights of *property*, begat frequent contests, we are told, in the province of Maryland; and even since its independence, defences to actions of trespass have been set up, grounded upon this supposed right of fishery saved to English and Irish subjects by this clause of the Maryland charter.† To suits of this

* See these charters in Hazard's Collections, vol. 2, p. 603 and 612. Chalmers, in his Annals, (ch. v. note 9,) has stated, that a similar clause was in the charter of Pennsylvania of 1621, but that is a mistake, no such clause is in it. William Penn was too crafty and cunning to allow it; and moreover, arbitrary power, in the sunshine of which he much basked, was too prevalent at the time of his charter for any omissions of such minor rights to occasion much clamour.

† Some time in the year — an action of trespass *quare clausum fregit*, was tried in Talbot county court, for trespassing on the shores of the plaintiff, in hauling a seine for fish in Thirldhaven creek. The court very properly adjudged, that if the defendant, or those employed by him, landed on the shore and soil of the plaintiff, after notice forbidding him to do so, it was a trespass for which an action might be sustained. But some doubt arising on the evidence, whether the defendant actually himself landed on the shore, he having remained in his canoe or boat on the water, the jury were divided and could not agree. To relieve

nature, Mr. Chalmers, in his *Annals*, alludes in the following SEC. IX. remarks.—“The history of this clause in the charter of Maryland decides a long contested point in the jurisprudence of that province. Whether the reservation of the right of fishing related to the subjects of England and Ireland only, according to the express words of it, or to the inhabitants of Maryland also, has been long and sometimes forcibly debated. The latter, adjudging the dispute in their own favour, have at all times exercised the privilege, though not always without opposition. By the common law they may assuredly fish in all navigable creeks and rivers : But, a freedom to tread the soil of the freehold, or to appropriate any of the productions of it, requires some special authority. Such is the law of Virginia. All may fish in its numerous bays and rivers ; but none can land on their banks without the consent of the owners. The ancient law of Massachusetts, though contradictory to the express reservation of the charter, gave the fishermen a right to use any harbour, to occupy the adjoining shores for curing their fish, to take timber and firewood ; paying the town or persons, who are the proprietors, for the same.”*

As Mr. Chalmers resided in Maryland, within a few years prior to the American Revolution, it is probable, that the “long contested point in the jurisprudence of that province,” which he mentions, occasioned Daniel Dulany, Esq. a lawyer of considerable eminence in that province, to give his written opinion on this subject, which bears date, “July, 1768 ;” the substance of which appears to be :—“That, as the right to the soil of the province was vested in the crown, prior to lord Baltimore’s charter, that right was, by that instrument of grant, transferred to his lordship, and from him to his several grantees, the occupiers and owners of such soil : That the *saving* clause, relative to the right of fishery, in the sixteenth section of that charter, only *qualified* the precedent general grant, by reserving to *all the subjects of the kingdoms of England and Ireland*, the liberty of fishing in the sea, bays, rivers, and creeks of the province ; that the people of Maryland were not the subjects of the king of England or in the realm or kingdom of England, but in the dominions belonging to it ; and he was, therefore, of opinion,

them, a compromise of the suit took place. It was thought at the time, that the unpopularity of the ground of the action had some influence upon the jury.

* Chalmers’s *Annals* ch. v. note 9.

SEC. IX. that the inhabitants or residents of Maryland are not comprehended in the saving above mentioned, for the purpose aforesaid.”*

1628.
Lord Baltimore visits Virginia.

We are now to attend to the progress of lord Baltimore in establishing his colony in Newfoundland. Having resided here a few years, he soon discovered, that it was not a country fit, or at least eligible, for colonization. As he had, without doubt, received full information of the flourishing situation of the colony of Virginia, and favourable accounts of the climate and soil of the country bordering on the Chesapeake, he was induced, in the year 1628, to visit that colony, in search of some more desirable situation for his Catholic dependents.† Whether a jealousy of his colonial views, or those general prejudices against the papists, which were now more prevalent than ever, even in the mother country, operated with the Virginians, his visit was received by them most ungraciously indeed. What renders this reception of him somewhat more surprising, is, that the colonists of Virginia had not emigrated from England to evade religious persecution, as those of New England are supposed to have done, but seem to have been allured to it originally by the prospect of a sudden accumulation of wealth, by means of the discovery of mines as the Spaniards had done, or a shorter route to the Indies. The church of England was then the established religion in Virginia, and Puritanism had not been hitherto encouraged among them. It is true, that those in England who were denominated high churchmen, as archbishop Laud and others, were accused by the Puritans of being inclined to popery; but it is to be remembered, that king Charles constantly professed, and apparently with sincerity, to be alike opposed to popery and Puritanism.‡ He was evidently less inclined to favour the papists than his father had been. It is clearly perceptible throughout the early part of his reign, that the churchmen considered themselves as standing upon a ground quite distinct

* See this opinion at large in Harris and MacHenry's Maryland Reports, vol. 1, p. 564.

† Some writers make his visit to Virginia to have been in 1631; (See Holmes's Annals, vol. 1, p. 261; but Burk in his late history of Virginia, vol. 2, p. 25,) places this event in 1628; for which he seems to rely on a MS. copy of "Ancient Records" of Virginia, in his possession, preserved from destruction in the time of the American revolution, by colonel Byrd.

‡ Even Rapin acknowledges, that he did not believe that either the king or archbishop Laud ever formed the design of restoring the Romish religion, and mentions the circumstance of the archbishop being offered a cardinal's cap, if he would help to do it. Rapin's Hist. (Tindal's edit.) vol. 8, p. 526-7.

from either the papists or the Puritans. Taking the tone from SEC. IX.
1628. the sovereign, the officers of justice began to put in execution the laws against both more frequently than in the former reign, though the emptiness of the royal coffers induced the monarch to connive at the frequent practice of compounding for the penalties. It is not impossible, but that this disposition of the minds of churchmen towards the Catholics, had passed by this time across the Atlantic to Virginia.

Immediately on the arrival of lord Baltimore in Virginia, the assembly of that province, actuated, as is supposed by a late historian,* by a sense of duty, caused the oaths of allegiance and supremacy to be tendered to him and his followers. He rejected them, proposing, however, at the same time, for himself and his followers a form of oath, which he declared himself ready to accept. As particular forms of these oaths were prescribed by particular statutes, it was not in the power of the assembly to dispense with them after being tendered. In this state matters rested, the assembly contenting itself with laying the whole transaction before the privy council in England.†

The conduct of the Virginians towards him.

Setting aside the want of courtesy and hospitality in this treatment of lord Baltimore, and the questionable colonial policy of the measure, as it would appear to us at this day, considerable doubts might arise as to the legal power of the assembly, in this instance, to tender these oaths to his lordship. No such power appears to have been given by what is called the first charter of Virginia, of 4 Jac. 1. By the second charter of the 7 Jac. 1, power was given (as before mentioned‡) “to the treasurer for the time being, and any three of the council, (that is, any three of the council of Virginia *in England*,) to tender and exhibit the said oath (of supremacy) to all such persons as shall at any time be *sent and employed* in the said voyage.” By the third charter of Virginia, of the 9 Jac. 1, power is given to the treasurer or his deputy for the time being, “or any two others of the said council, for the said first colony in Virginia, to minister and give the oath and oaths of supremacy and allegiance, or either of them, to all and every person and persons which shall at any time or times hereafter, go or pass to the said colony of Virginia.” But it is evident, that these clauses of *dedimus*

* Burk, in his Hist. of Virginia, vol. 2, p. 25.

† Burk's Hist. *Ibid.*

‡ See this clause of this charter before recited in p. 184.

SEC. IX. *potestatem*, in both these charters, vested authority for that purpose in the treasurer and company in *England*, and not in any of the members of the government in *Virginia*, and that too must have been necessarily exercised by them before such persons passed into Virginia. But after all, should this reasoning not be thought to be correct, it is certain, that these charters were all annulled by the judgment of the court of king's bench, on the *quo warranto* before mentioned, and the assembly itself was but a self-created body, not authorized by the commission of government to Mr. John Hervey, of the 26th of March, 1627, the only then existing authority for the government of Virginia. Moreover, if these oaths were tendered to him by two justices of the peace, of the province, the statutes which enabled two justices to do so, expressly excepted noblemen from their jurisdiction.

Differences among the Catholics with respect to the oaths of allegiance and supremacy

It was not to be expected, that such a conscientious Catholic, as lord Baltimore is represented to have been, could with propriety have taken the oath of supremacy, which oath at that time was the one prescribed by the statute of 1 Eliz. ch. 1, sec. 19; inasmuch as he must thereby have declared, that the king was the only supreme governor of all his dominions and countries, "as well in all spiritual or ecclesiastical things or causes, as temporal." This could not consistently be done by one who believed the pope to be the supreme head of the christian church. It was, probably, then known also by his lordship, being an Irish peer, that pope Urban VIII. had but a few years before (in the year 1626) issued his bull to the Irish Catholics, in which "he exhorted them rather to lose their lives, than to take that wicked and pestilent oath of supremacy, whereby the sceptre of the Catholic church was wrested from the hand of the vicar of God Almighty."* But as to the oath of allegiance, which was that prescribed by the statute of 3 Jac. 1, ch. 4, sect. 15, although it required a denial of the pope's power of excommunicating kings, and thereby deposing them, yet many of the moderate English Catholics, soon after the making of the statute of 3 Jac. 1, in the year 1606, thought that they could with propriety, and actually did, take the oath prescribed by that statute; and in this they were encouraged by George Blackwell, who had been established as the archpriest or superior of the Catholic church in England, and who gave it as his opinion that the English

* Leland's Hist. of Ireland, vol. 2, (ch. 8,) p. 479.

Catholics might with safety take this oath of allegiance. But SEC. IX.
 pope Paul, by a brief, in 1606, forbade them to take it. Black- 1628.
 well refused to publish the brief, and on that account the Eng-
 lish Catholics conceived that it was a forged one. The pope,
 however, renewed his prohibition, and cardinal Bellarmine wrote
 a sharp letter of reproof to Blackwell, exhorting him to redress
 his fault, and rather suffer martyrdom than continue that course.
 Blackwell answered Bellarmine, that since the ablest divines did
 not believe that the pope had any power over the temporals of
 princes, he thought that he might in conscience take the oath
 according to that opinion.* This letter of Bellarmine and the
 two briefs of the pope, drew forth the pen of king James, who
 was always glad of an opportunity of displaying his talents for
 theological controversy; and it is said,† he clearly demonstrated
 that the cardinal had confounded the two oaths of supremacy
 and allegiance, and thereby shown, that he did not understand
 the subject. The intended distinction between them, appears
 to have been, that the oath of supremacy obliges the subject to
 acknowledge the king for supreme head of the Church of Eng-
 land, as well as to bear allegiance to him; but the oath of alle-
 giance, prescribed by the statute of 3 Jac. 1, requires only sub-
 mission and obedience to the king, as a sovereign, independent
 of any other power upon earth.‡ So that it was supposed, that
 every Catholic could safely take this new oath, unless he was
 one of those who thought, that to be a true Catholic it was ne-
 cessary to believe, that the pope had power to depose kings,
 and give away their dominions. It is said also,§ that the com-

* Blackwell probably alluded here to some controversial writings, which the
 then recent dispute between pope Paul V. and the republic of Venice had occa-
 sioned. That pontiff had thought that some laws or decrees of the senate inter-
 fered with his ecclesiastical jurisdiction, and demanded by his nuncio, that they
 should be revoked. The senate supposing that these laws concerned only mat-
 ters which were properly the subjects of their internal police, refused the de-
 mand. Two clergymen also, who had committed crimes, were about to be pun-
 ished. He demanded that they should be delivered up, to be tried by his eccle-
 siastical judges. This also the senate refused. The consequence was, that his
 holiness pronounced the doge and the republic excommunicated. This dispute
 occasioned many books to be written, in different parts of Europe, relative to
 the bounds of division between ecclesiastical and political power; in which
 many sound Catholics attempted to maintain the independence of princes and
 states against the papal power. See Dupin's Hist. of the Church, Cent. 17,
 chap. 2 and 3.

† Rapin's Hist. (Tindal's edit.) vol. 8, p. 65.

‡ Ibid. vol. 8, p. 62.

§ Ibid.

SEC. IX. mons having put into the rough draught of the oath, "that the
 1628. pope has not power to excommunicate the king," James observed, that these words might possibly offend his good Catholic subjects, and it would be sufficient to assert, that the pope's excommunication could not authorize subjects to rise against their sovereign. Whether foreigners, especially Catholics, really understood these distinctions or not, it seems that soon afterwards, in conformity to the sense of it at the court of Rome, the English Catholics generally adopted the resolution of rejecting both oaths alike. It was not to be wondered at, therefore, that lord Baltimore should on this occasion, have also pursued that line of conduct.

Lord Baltimore forms the scheme of settling a colony in Maryland.

Whether lord Baltimore personally, at the time of his visit to Virginia, explored that tract of country now denominated Maryland, of which he afterwards procured a grant, we are not positively informed. But, as the obtaining a more complete knowledge of the country bordering on the Chesapeake, than he could otherwise possibly have from report, must have been the principal object of his visit, we cannot but suppose, that he must at this time, notwithstanding the discouragement of his pursuits by the Virginians, have made the tour by water of the principal parts of the Chesapeake bay. Although it is highly probable, that the Virginians had then been for some time in the practice of trading and bartering with the Indian natives inhabiting the shores of that bay, even to its head, at the mouth of the Susquehanna; and might, indeed, as it is said, have established trading houses on some of the islands toward the head of the bay, particularly perhaps on the isle of Kent; yet, if the "ancient records" of Virginia, before mentioned, and cited by a late historian of that state, be authentic to prove that this visit of lord Baltimore to Virginia, was in the year 1628, which we have here taken as granted, there are strong grounds to presume, that at this time there had been no permanent settlements made, either by the Virginians or any other Europeans, within the lines and limits of any part of that country for which the lord Baltimore afterwards obtained a grant, unless a colony of Swedes and Fins, which had arrived in the Delaware, in the preceding year, (1627,) and may be supposed to have been in this year settling themselves at the mouth of Christina creek, near Wilmington, in what is now called the Delaware state, be considered to have been within the limits of his lordship's patent.

It may be proper to take some further notice here, of this attempt at colonization by the Swedes, inasmuch as it was made the ground of a charge in the bill in chancery, filed by the Penns, proprietors of Pennsylvania, in the year 1735, against lord Baltimore, in a dispute concerning the bounds of their provinces, that his lordship had set forth, in his petition to the king for his grant, what was not true; that is, that the country for which he prayed a grant, "*was not then cultivated and planted*, though in certain parts thereof, inhabited by certain barbarous people;" by means of which false suggestion, it was contended that his patent was void, at least for so much as was within their claim.*

It appears, that in the year 1626, under the reign of Gustavus Adolphus, king of Sweden, a scheme was formed in that kingdom, for settling a colony in America. This was chiefly promoted by the great commendation which William Ussellin, (or Useling,) an eminent Swedish merchant, gave of the country in the neighbourhood of what was then called New Netherlands, now New Jersey and New York. Gustavus was thereby in-

SEC. IX.
1628.
Settlement of a colony of Swedes on the Delaware.

* From a MS. copy of the above mentioned bill in chancery, in my possession, the following clause is extracted: "and your orators further show unto your lordship, that on the eastern side of the said peninsula or tract, and also above the said peninsula or tract, within the main land or continent, and towards the sea and the estuary and river of Delaware, there was, of very early and ancient times, (*the beginning whereof is not known*,) a settlement and plantation, made and planted and inhabited by christians of the Swedish nation; and the said settlement and plantation was afterwards held and inhabited in the year 1609, and for many years then after, by christians under the dominion of the states general, of the United Provinces." Mr. Murray, (afterwards lord Mansfield,) who drew this bill, was certainly misinformed as to two facts exhibited in this allegation. No authentic history has ever yet undertaken to show, that the Swedes were settled on the Delaware, in "times the beginning whereof is not known," nor indeed prior to the year 1627, as is stated in Proud's Hist. of Pennsylvania; and it is, moreover, entirely inconsistent with the early events of the History of Virginia, wherein no circumstance to that purpose is recognized. The other fact stated, seems to be in consequence thereof, evidently groundless, to wit: that the Dutch had "*afterwards, in the year 1609*, held and inhabited the said settlement of the Swedes." Now it seems to be agreed on all sides, that captain Hudson did not make his *voyage of discovery*, under the authority of the Dutch, until the year 1609; and it was not until the next year, (1610,) that the Dutch colony was sent out, which settled on Manhattan (now New York) island. It would necessarily take some years for them to have extended their *possessions and habitations* to the Delaware. Accordingly, the historian of Pennsylvania, (Proud,) makes the first settlement of the Dutch on the Delaware, to have been in the year 1623, "near Gloucester, in New Jersey;" which apparently indicates, that their first exploring excursions to the Delaware were from Manhattan across the Jersies; and this was, as Proud asserts, "before any of the Swedes came into America." See Proud's History of Pennsylvania, vol. 1, p. 110.

SEC. IX. 1628. duced to issue a proclamation, exhorting his subjects to contribute to a company associated for the settlement of a colony in that country. Considerable sums were raised by contribution; and in the next year, (1627,) a number of Swedes and Fins came over to America. They first landed at Cape *Inlopen*, the interior cape of Delaware bay,* which, from its pleasant appearance to them, they named Paradise-point. They are said to have purchased of some Indians, the land from Cape Inlopen to the falls of Delaware, on both sides of the river, which they called *New Swedeland* stream; and made presents to the Indian chiefs, to obtain peaceable possession of the land so purchased: with whom they appear to have lived in much amity;† but they were frequently disturbed by the Dutch settled at Manhattan, now New York, who, extending their territories, which they called New Netherlands, so as to include the western shores of the Delaware, built a fort in the year 1630, on a small creek near Cape Inlopen or James, calling it Hoarkill, since called Lewis town.‡ While we are upon this subject, it may not be improper to observe further, that it seems to be agreed by historians, that in the succeeding year, (1631,) the Swedes erected a fort on the west side of Delaware, at a place near Wilmington, upon the river or creek, which still, from the name of the fort, is called *Christina*, or commonly *Christeen*,§ where they had laid out a town, and made their first settlement.

* A note is here made by Mr. Proud, (in his Hist. of Pennsylvania, vol. 1, p. 111,) as follows: "this cape is frequently confounded with cape *Hinlopen*, the exterior, or the *False Cape*, in *Fenwick's* island, being written in the same manner, and sometimes *Henlopen*; said to be a Swedish word, signifying *entering in*. It was also formerly, sometimes called Cape *Cornelius*, and afterwards by *William Penn*, Cape *James*." From this it would appear, that the aspirate letter H, in the Swedish language, prefixed to the word *Inlopen*, altered the sense of it, from the *interior* to the *exterior* cape, the latter of which was at Fenwick's island.

† Smith, in his Hist. of New Jersey, says, it is uncertain whether they bought the land of those natives, who could properly convey it. Holmes's Annals, vol. 1, p. 242.

‡ The building of this fort at Lewis town, is differently related in Holmes's Annals, vol. 1, p. 259, under the year 1630. He says, "the Dutch continuing their pretensions to the land settled by the Swedes, *one of the Swedes* built a fort (this year) within the Capes of Delaware, "at a place called Hoarkill;" for which he cites Smith's Hist. of New Jersey, 22. So that from him it would seem, that the fort above mentioned was built by the *Swedes*, and not the *Dutch*, as it is stated in Proud's Hist. of Pennsylvania, vol. 1, p. 113; from whence what is said above in the text here, is taken.

§ This is sometimes corruptly spelt *Christiana*, but as the name of Gustavus's mother was *Christina*, and he had a daughter, born in 1626, called *Christina*, who succeeded him as queen of Sweden, and was much celebrated in history, it is probable that *Christina* is the true name of the fort and creek.

Supposing this settlement of the Swedes at Christina, in the year 1631, to have been the first *permanent* settlement made by them on the Delaware, as it would appear to be, although temporary habitations might have been created by them before that time at Hoarkill, or other places, *for the purposes of traffic* with the natives, it goes very far to justify the suggestion of lord Baltimore before mentioned, that the territories for which he prayed a grant, were "hitherto unsettled; which receives further confirmation by the possibility of his being ignorant of the first trafficking voying of the Swedes to the Delaware, in the year 1627, which was but the year preceding that of his visit to Virginia. But allowing that he had full knowledge of the arrival of the Swedes in the Delaware, in the year 1627, it was natural for him to have considered them only as interlopers, intruding into the British dominions;* and therefore, in his representation to his majesty, not entitled to be considered as persons, whose settlements could obstruct his grant. The Dutch, whatever their subsequent claims might have been, had then certainly made no

SEC. IX.
1623.

* That all other nations who attempted to make settlements in any part of North America, especially in those parts of it lying between the colonies of Virginia and New England, were considered by the English at this time as intruders within their dominions, is evident not only from the preceding expedition of captain Argall, against the French and Dutch as before mentioned, but from their subsequent contest with the Dutch about their settlement at Manhattan. This claim of theirs was founded on the right of prior discovery by Sebastian Cabot; to demonstrate which, a small tract or essay was drawn up by some anonymous writer, most probably towards the end of the Dutch war in 1654, but published in Thurloe's State Papers, under the year 1656; (see it in Hazard's Collections, vol. 1, p. 602,) entitled "A Brief Narration of the English Rights to the Northern parts of America;" in which the author, after some laboured reasoning, and metaphysical distinction between *general* and *particular* rights, concludes, "that as the general and particular rights of the English to those northern parts of America, are so plainly and perspicuously laid down, so upon a due examination it will be found, that the Dutch have no right at all, either in the general or particular, but *have intruded into and anticipated the English in their rights.*" Agreeably to this right of the English, preparations were made by the New Englanders, in 1654, for conquering the Dutch settlement at Manhattan; but Oliver, desirous that the two sister republics, the English and Dutch, should be well with each other, clapped up a sudden peace in April, 1654, which put an end to the hostile intentions of New England, and left the Dutch for some years in quiet possession of New Netherlands. In the next year, (1655,) the Dutch made a conquest of all the Swedish settlements on the Delaware. Smith's Hist. of New York, 18, 19: but Oliver, charmed with the fine character of Charles X. king of Sweden, made a treaty with him in the year 1656, in which he promised to grant such of his majesty's Swedish subjects as should be recommended by him, "special license" to trade in America. See Hazard's Collections, vol. 1, p. 605, and Hume's Hist. ch. 61.

SEC. IX. permanent settlements within the limits of his grant. With re-
 1628. gard to the extent of his patent to the fortieth degree of latitude, (inclusive,) it is to be observed, that the latitudes of the different places of such a new country, must have been subject to much error, being often taken and so set down by unskilful persons; and, as lord Hardwicke observed, in the great case of these two proprietors, (the Penns and lord Baltimore,) before referred to, it is a fact, that latitudes were then fixed much lower than they have been since found to be by more accurate observations. A mistake of the latitude, in extending his northern bounds, might therefore have been very unintentionally made.*

The Virgi-
 nians op-
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 scheme.

As both the second and third charters of Virginia, before mentioned, unquestionably comprehended the whole of the country afterwards called Maryland, it was to be expected that the colonists of Virginia, would make some objections to any grant, whereby a part of their territory should be lopped off from them and transferred to others. But, although some apprehensions on this ground of supposed injury to them in their rights, were artfully raised among them, so as to induce them in a few years afterwards, to prefer a petition to the king and council, against any grant of their territory to lord Baltimore, as will hereafter be seen in its proper place; yet it appears, that they had too much discernment, not to perceive, on more mature reflection, that a colony planted so near to them as that of Maryland, so far from being injurious, would be highly beneficial to them, particularly in contributing to their greater security from the hostile invasions of the savages. And when we reflect upon the enormous extent of those territories included within the lines of their charters, to wit: "from the point of land called *Cape* or *Point Comfort*, along the sea-coast to the northward, two hundred miles, and in equal distance to the southward, and from sea to sea, west and northwest;" that is, from the Atlantic to the Pacific Ocean, it leaves the question of policy, and indeed of right and justice, easily to be decided at this day. We may here further observe, that inasmuch as these charters of Virginia had been all annulled by the judgment of the court of king's bench, in the year 1624, (whether rightfully or not, could not be questioned but in a legal manner, by writ of error or appeal to a superior tribunal,) all political right of the colonists in Virginia to any territory whatever, except to the particular tracts which each

* See note (H) at the end of this volume, before referred to.

individual colonist occupied, must have been taken away from them by such judgment until reversed. It seems, therefore, with regard to the colonists in Virginia, in a corporate capacity, to have been an act perfectly justifiable in lord Baltimore to apply for, as well as lawful for the king to grant, all that territory included within the lines of his patent.

But the most formidable objection raised against his grant, seems to have been founded on a circumstance, apparently immaterial to the public, however it might interfere with the private rights of some individuals. It has been alleged, on a variety of occasions, that settlements had been established by the Virginians, under the authority of William Clayborne, within the country afterwards denominated Maryland, prior to the date of his lordship's charter of grant for the same,* and that as it was suggested therein, that the country was *hitherto unsettled*, "*hactenus inculta*," his grant became thereby void. But it seems to be extraordinary, that although history recognizes this objection as being frequently made, yet it furnishes no authentic proof of the fact on which it is founded. If lord Baltimore's visit to Virginia was in the year 1628, as we have supposed on the authority of the History of Virginia, before cited,† there are some established facts in history, which seem to indicate very strongly, that at the time of *his visit* to Virginia, whatever there were at the time of his grant, no such settlements had been made. Temporary habitations, for the purposes of traffic with the natives, might have been before that time erected, both on the isle of Kent and at the mouth of the Susquehanah, as contended; but these were certainly not such settlements as could preclude the right of the crown to grant, or the justice and policy of planting in that country a numerous colony. It may be proper, however, to investigate the claim of William Clayborne a little more minutely.

When king James had caused the charters of Virginia to be dissolved by a judgment in the court of king's bench, as before mentioned, and had vested the supreme direction of the affairs of Virginia, in a provincial council, in England, he afterwards, also, as before observed, issued his commission, bearing date the 26th day of August, 1624, to Sir Francis Wyatt, and others, vesting the government in Virginia, in a governor and council,

William
Clay-
borne's
claim.

* June 20th, 1632.

† "Ancient Records," mentioned in Burk's Hist. of Virginia, as before cited.

SEC. IX. who should reside in the colony. Among those so nominated
 1628. of the council, was William Clayborne. From whence we may infer, that he was then, or shortly afterwards became, a resident in Virginia ; and was a man, who by some merit, had attracted the royal notice. When king Charles, on the death of his father, renewed the commission for the government of Virginia, to Sir George Yardley, and others, of the 4th of March, 1625, Clayborne was continued as one of the council. Moreover, in the same commission, towards the conclusion thereof, he was appointed secretary of state in Virginia, in the following remarkable expressions : “ and forasmuch as the affairs of state of the said colony and plantation, may necessarily require some person of *quality and trust*, to be employed as secretary, for the writing and answering of such letters, as shall be from time to time directed to, or sent from the said governor and council of the colony aforesaid, our will and pleasure is, and we do by these presents, nominate and assign you the said William Clayborne, to be our secretary of state, of and for the said colony and plantation of Virginia, residing in those parts ; giving, and by these presents granting unto you, the said William Clayborne, full power and authority to do, execute, and perform all and every thing and things whatsoever, to the said office of secretary of state, of and for the said colony and plantation of Virginia, incident and appertaining.” By the subsequent commission to John Harvey, esquire, and others, of the 26th of March, 1627, for the government of Virginia, Clayborne was again continued one of the council, and re-appointed secretary of state, in the same words just cited from the former commission ;* from whence we are enabled to collect some ideas of the character and standing of this gentleman, who afterwards proved so troublesome to lord Baltimore and the early settlers of Maryland. As it seems to have been a practice with many of the first colonists of Virginia, especially those of note and influence, to endeavour to derive some emolument to themselves, by carrying on a traffic or bartering with the Indian natives, particularly those inhabiting the shores of the Chesapeake, for their peltry, and such other commodities as would afford a profit, when sold in the province, or exported to Europe, we find that Mr. Clayborne was one of those, who availing himself of his station and influ-

* For these several commissions relative to Clayborne, see Hazard's Collections, vol. 1, pp. 189, 230, 231.

ence, early sought to better his fortunes in this way. It appears SEC. IX.
1628. also, that during the years 1627–28–29, the governors of Virginia gave authority to William Clayborne, “the secretary of state of this kingdom,” as that most ancient dominion was then called, to discover the source of the bay of Chesapeake, or any part of that government, from the 34th to the 41st degree of north latitude. This was, as a learned annalist alleges, in pursuance of particular instructions from Charles the first to the governors of Virginia to procure exact information of the rivers and the country.* Under this authority or commission for making discoveries in the Chesapeake, it would appear, that Mr. Clayborne first availed himself of the opportunity of establishing a system of traffic with the natives on the shores of the upper parts of that bay, and most probably first fixed some trading-houses, for that purpose, on the isle of Kent. But it seems, that this species of traffic could not lawfully be carried on without a spe-

* Chalmers’s Annals, ch. ix. note 12, who cites Virg. papers, 75 B. p. 133–4; to which he adds the following remark. “Thus were the boundaries of Virginia extended “in those years to the 41st degree of latitude, where New England began; and we may thence *infer*, that, though the subjects of other nations traded with the aborigines in the bay of Delaware, yet no settlements had been then formed on either margin of it by the Dutch or Swedes.” However erroneous this inference of the annalist may appear, yet the prior part of his remark will be found to be very important, when we come to animadvert on the subsequent disputes between the proprietors of the two provinces—Maryland and Pennsylvania. It demonstrates, that the sense of the government of Virginia was, at the time of these instructions for discoveries in the Chesapeake, that the limits of their province extended as far northward as to the *forty-first* degree of latitude, which must have been *inclusive* of the *fortieth* degree. The third and last charter of Virginia, of March 12th, 1611–12, expressly enlarged their boundaries to that degree of latitude; and the charter of New England, (before cited, of November 3d, 1620,) commences the south bounds of New England “*from the fortieth degree.*” Hence lord Baltimore in his charter extended his lines northward to the northward extremity of Virginia, “unto that part of the bay of Delaware in the north, which lieth under the fortieth degree of north latitude from the equinoctial, *where New England is terminated.*”

These remarks receive further corroboration also from a commission of a similar nature, stated by Burk, in his Hist. of Virginia, (vol. 2, p. 32,) granted by the governor of Virginia (Harvey,) in the year 1629, “to captain Nathaniel Bass to trade between the 34th and 41st degrees of north latitude, or to sail to New England, *Nova Scotia*, or the *West Indies*. The instructions of Bass,” (as Burk proceeds in stating the commission,) “contain some particulars deserving notice. He is desired to invite the inhabitants, particularly those of New England, to emigrate to Virginia: and to offer *Delaware bay* to such as were inclined from the coldness of their climate and the barrenness of their soil, to settle in Virginia: He was directed to sell them corn at twenty-five shillings per barrel, or fifteen, if they exported it; and to open a trade for goats, cattle, and hogs on reasonable terms.”

SEC. IX. cial license either from the king himself or the governor of the
 1628.. province; for reasons founded, without doubt, in the personal danger of the colonists in general, by too indiscriminate an intercourse with the natives, especially in furnishing them with fire-arms and teaching the use of them. It would seem also, that Sir Ferdinando Gorges, chief of the numerous patentees under the before mentioned New England charter of 1620, had in the succeeding year, 1621, consented to a sub-grant of a part of their territories to Sir William Alexander, under the denomination of *Nova Scotia*; supposing that the patronage of Sir William, being then king James's secretary of state for Scotland, and a person of considerable influence at that time, would much promote the success of the company.* William Clayborne also by some means had insinuated himself into the good graces of the Scotch secretary, under a pretence of promoting an interchange of trade between the colonies of *New England*, *Nova Scotia*, and *Virginia*, as through him to obtain a license, under the hand of king Charles, (and, as it seems, under his signet for Scotland,) bearing date, May 16th, 1631, "to trade in all seas, &c. in or near about those parts of America." For the more effectual execution of this license, command also was therein given to the governor of Virginia—Sir John Harvey, to permit the said Clayborne and his company, "freely to repair and trade to and again in all the aforesaid parts, as they should think fit and their occasions should require."† In about ten

* Chalmers observes, (in his Annals, ch. iv.) that "the ingenious writings of this gentleman," (Sir William Alexander,) "promoted the interests of colonization, by enflaming the spirit of emigration."

† Chalmers, in his Annals, (ch. ix. note 13,) has given us a copy of the license, above alluded to, (from Virg. pap. 75 B. p. 131,) with this prefatory remark:—"The following royal license is subjoined; because it is the most ancient state paper of Maryland; it laid a train of numerous woes to that province; by giving an interested man a pretence to claim a large part of it.

"Charles Rex.

"Whereas our trusty and well beloved William Clayborne, one of the council and secretary of state for our colony of Virginia, and some other adventurers, which with him have condescended, with our trusty and well beloved counselor, Sir William Alexander, knight, our principal secretary of state for our kingdom of Scotland, and others of our loving subjects, who have charge over our colonies of New England and Nova Scotia, to keep a course for interchange of trade among them as they shall have occasion, as also to make discoveries for increase of trade in those parts; and because we do very much approve of all such worthy intentions, and are desirous to give good encouragement to their proceedings therein, being for the relief and comfort of those our subjects, and enlargement of our dominions: These are to license and authorise you, the said William Clayborne, his associates, and company, freely, without interruption, from time

months afterwards Clayborne applied to Sir John Harvey, the SEC. IX.
1628.
governor of Virginia, for a commission "to sail and traffic unto the adjoining plantations of the *Dutch* seated upon this territory of America." A commission was accordingly granted to him by the governor, bearing date the 8th of March, 1631, (the 18th of March, 1632, N. S.) "authorising him to go unto the said plantations of the *Dutch*, or unto any *English* plantation, or to such other habours, rivers, and places, as he shall find occasions; praying all governors, captains, and commanders, to afford to him all lawful favour and respect."*—Now it is very obvious,

to time, to trade for corn, furs, or any other commodity whatsoever, with their ships, boats, men and merchandize, in all seas, coasts, harbours, lands, or territories, in or near about those parts of America, for which there is not already a patent granted to others for sole trade; and, to that effect, we command you and every one of you, and particularly our trusty and well beloved Sir John Harvey, knight, governor, and the rest of our council of our colony of Virginia, to permit him and them, with their ships, mariners, merchandize, servants, and such as shall willingly accompany or be employed by them from time to time, freely to repair and trade to and again in all the aforesaid parts as they shall think fit and their occasions shall require, without any hindrance whatsoever, as you and every of you will answer the contrary at your perils; Giving, and by these presents granting, unto the said William Clayborne, full power to direct and govern, correct and punish, such of our subjects as shall be under his command in his voyages and discoveries; and for his so doing these presents shall be a sufficient warrant. Given at our manor of East Greenwich, the 16th of May, in the seventh year of our reign, 1631.

"To our trusty and well beloved our governor and council of Virginia, and to all our lieutenants of provinces and countries in America, governors and others having charge of colonies of any of our subjects, captains and masters of ships, and, generally, to all our subjects whatsoever, whom these presents do or may concern."

On this license Chalmers has subjoined a further remark.—"This paper was evidently drawn by Sir William Alexander, and afterwards passed under the privy signet of Scotland: what right within an English colony could that convey?"

* This commission from Sir John Harvey is also published in Chalmers's *Annals*, (ch. ix. note 14,) as "the second state paper of Maryland;" for which he cites *Virg. pap.* 75, B. p. 130;—and is as follows:—

"To all to whom these presents shall come. I, Sir John Harvey, knight, governor and captain-general of Virginia, send greeting, in our Lord God everlasting. Whereas my trusty and well beloved friend, William Clayborne, esquire, and one of the council of state for this colony, hath desired, for increase of trade, to obtain this my commission to sail and traffic unto the adjoining plantations of the *Dutch* seated upon this territory of America; which may tend to an intermutual benefit, wherein we may be useful to one another: Now know ye, that I, the said Sir John Harvey, out of the good opinion I conceive of the discretion and understanding of the said capt. William Clayborne, do, by these presents, with the consent of the council of state, authorise him, with the first convenience of wind and weather, to set sail from hence, in such barques and pinnaces, and with such companies of men, as shall willingly accompany him to

SEC. IX. 1628. from a perusal of these two several commissions and a fair construction of them, that neither of them mention or apparently refer in the slightest degree to any plantations or settlements, or indeed to any traffic in the Chesapeake. It is evident, that first—the king's license, was intended only to promote a trade between the colonies of Virginia, New England, and Nova Scotia; in the last of which Sir William Alexander, without doubt, felt himself somewhat interested, although he had, the year before, sold the greatest part of that territory to Sir Clande St. Estienne; upon the express condition, however, that he (Sir Clande,) and those claiming under him, should continue to be faithful subjects of the king of Scotland.* The other commission, from the governor of Virginia, does not appear to have been granted in pursuance of or in obedience to the command expressed in that of the king, no reference thereto being mentioned in it; but as stated in the preamble, and apparently understood by the governor and council of Virginia, it appears to have been granted solely in contemplation of a *trade with the Dutch*; which meant, most probably, the Dutch colony at Manhattan;† for, although the Dutch might by this time have commenced some settlements on the Delaware, yet they must have been only temporary settlements for traffic with the natives, and not an object justifying the expense of a sea-voyage, as the governor's commission purported. The recommendation of Clayborne also, in the commission, to "all governors," &c. shews, that it could not have been meant as a license to trade in the Chesapeake.—But, supposing these licenses or commissions for trade extended every where throughout America, "for which there was not not already a patent granted to others for sole trade," it is impossible, by any subtlety of interpretation, to con-

go unto the said plantations of the Dutch, or unto any English plantation, or to such other harbours, rivers, and places, as he shall find occasions; praying all governors, captains, and commanders, to afford to him and them all lawful favour and respect, they behaving themselves fairly and honestly in all things: Giving, and by these presents granting, unto him, the said captain William Clayborne, full power and authority to direct and govern such persons as shall accompany him in his said voyage. Given at James-city, the 8th of March, A. D. after the computation of the church of England, 1631; and in the five and twentieth year of this southern colony of Virginia.

JOHN HARVEY."

* See this grant in Hazard's Collections, vol. 1, p. 307.

† Of this opinion is Chalmers, who subjoins to the last cited commission to Clayborne, a "remark;" wherein he clearly shews, that the "adjoining plantations of the Dutch," must have meant "the Dutch plantations at Mannhattans."

strue either of them as *a grant of territory* in any part of the soil of America ; and so the lords commissioners of plantations thought, in the year 1639, when the matter came before them, as will be hereafter seen at large in their proceedings upon it.— Upon the whole view of the subject then, it appears, that if Clayborne had, prior to these licenses of 1631 and 1632, formed any settlements either on the isle of Kent or at the mouth of the Susquehanah, they must have been unauthorized settlements made under the exploring instructions before mentioned for discoveries in the Chesapeake, or special licenses by the governor of Virginia for trafficking with the natives. It could not possibly have entered into the head of lord Baltimore, at the time of his visit to Virginia, even if he had been then apprised of such unauthorised settlements within the territories for which he afterwards prayed a grant, that these settlements could ever have been raised up as objections of any validity against his charter.

It has been deemed necessary, to state the preceding circumstances, relative to the objections against lord Baltimore's grant, in order to show what was the real situation of the country thereby granted to him, at the time of his visit to Virginia, in the year 1628. From all which, it would seem, that his lordship might have returned to England, with the intention of soliciting a grant of all that country, which he subsequently denominated Maryland, and with a thorough conviction in his own mind, that it was then, in the year 1628, uninhabited by any but savages, and with the most perfect honesty and integrity of conduct, suggested to the king, that the country for which he desired a patent, was, as that instrument expresses it, "*hactenus inculta*," hitherto unsettled.

It is probable, that lord Baltimore did not take his departure from Virginia, until the following year. As few of the minute incidents of this nobleman's life have reached us, we are not informed whether he returned from thence to his province in Newfoundland, or to England; it is most probable, to the former. He is said to have made two visits to his colony at Ferryland; and that, in his second visit to that place, Great Britain being then at war with France, he was so fortunate as to perform some considerable services in recovering above twenty sail of English ships, which had been taken by a French squadron, and in capturing several of the enemy's fishing ships on the coast. As this war had been commenced by England against France, rather

SEC. IX.
1628.

1629.

Lord Baltimore returns to England, and relinquishes his views of a settlement in Newfoundland.

- SEC. IX. suddenly, about April, 1627, without any previous proclamation, and indeed without any just cause, through the instigation of the unprincipled Buckingham, then the sole director of all affairs in England, and who was regardless of every thing but his own interest and pleasures, there is no wonder that the vast number of English ships, which then frequented the coast of Newfoundland,* should have been left unprotected, and a prey to the first French force that might be sent against them. How lord Baltimore accomplished the recovery of these English ships, or the capture of the French fishing vessels, which were most probably unarmed, we are not informed. A sort of *petit guerre*, however, seems to have been carried on at this time between the English and French, in this part of America. The valuable right of fishery on the banks, to which the French had never relinquished their pretensions, was, without doubt, some cause of contest. In this year also, (1629,) a successful attack was made by a certain David Kertk, a French refugee and Hugonot, with his two sons, under the English banners, and with a considerable English force, upon the feeble settlement which the enterprising Champlain, was then endeavouring to support at Quebec. But, peace being made between the two countries, in the early part of this year, though probably not known in America until these events had past, Quebec and Canada were afterwards restored, and the French left to pursue their schemes of settlements and trade on the St. Lawrence, and the western shores of Newfoundland. These circumstances, together with the discouraging appearances of the climate and soil of the country, soon convinced his lordship, that it would never answer his purposes in colonization. Having found the country on the shores of the Chesapeake so much better suited to his plans, we may suppose, that
1630. in the succeeding year he returned to England, with the intention of exerting his influence at the English court, to obtain a grant thereof.
1632. It seems to have been considered by the king and his ministers, about this time, that on the dissolution of the charters of Virginia, as before mentioned, a right vested in the crown of
- Obtains the promise of a

* It appears from Smith's Hist. of Virginia, as cited by Mr. Holmes, (in his Annals, vol. 1, p. 237,) under the year 1626, that the coast of Newfoundland, for most of the late years, was frequented by two hundred and fifty sail of English vessels, estimated at fifteen thousand tons, employing five thousand persons, and making an annual profit of about one hundred and thirty-five thousand pounds sterling.

subdividing or re-granting such parts of the territories of Virginia formerly included within the lines of these charters, as had not before been parcelled out into small tracts to particular individuals. The king being under this impression, and lord Baltimore standing high in his personal esteem, the latter found little difficulty in procuring from his majesty, the promise of a grant of such a tract of country as his lordship then described to him. But before a charter or patent for that purpose could be finally adjusted, and pass the seals, his lordship died, on the 15th of April 1632. He left several sons; but Cecilius Calvert being his eldest, and by the laws of England, heir not only to his father's title, but perhaps to the bulk of his estate, the charter of grant, intended for his father, was, it seems, without hesitation, on the 20th of June following, executed to Cecilius, now become also, baron of Baltimore, in the kingdom of Ireland. It was intended, it is said, that the country granted by this charter, should have been called *Crescentia*; but when it was presented to the king for his signature, in conformity to his majesty's wishes, the name of the province was changed to that of Maryland, in honour of his queen, Henrietta Maria, a daughter of the great king Henry IV. of France.

SEC. IX.

1632.

grant of
the pro-
vince of
Maryland.
which is-
given, on
his death,
to his son
Cecilius.

NOTES AND ILLUSTRATIONS.

NOTE (A) p. 10.

THE reader ought to be apprized, that no circumstance attending modern history has occasioned more anachronisms than the variation of the commencement of the year in the computation of the christian era. To this may be referred the difference of opinion among different historians, not only as to the date of this commission to John Cabot, but as to the real date also of the voyage performed in consequence of it, either by him or his son Sebastian.

Although the period of time denominated a *year* is founded in nature, being the measure of time while the earth is performing its annual revolution round the sun, and therefore can never vary, yet the commencement of that year, like a point in the periphery of a circle, may be arbitrarily fixed upon without affecting its length or circumvolution. Hence different nations have fixed upon different periods of time for the commencement of their year, which has been commonly regulated by some remarkable event, from which as an epocha they compute their era. Agreeably to this, the christian era is commonly supposed to be computed from the first existence of Christ upon earth, that is, when God first assumed a mortal nature, whether that be at the time of his *incarnation* or *nativity*. But this mode of computation did not take place among the christians until more than five hundred years had elapsed from that remarkable epocha. Prior to this time the generality of christians computed, either from the building of Rome, or according to such other computation as was in use with the people among whom they lived; if with the Jews from the creation of the world, or with the Greeks according to the Olympiads. But as the number of christians had in the sixth century very much increased, both in Greece and Italy, and from that circumstance began to assume somewhat more important consideration than formerly, and the eastern and western or Greek and Latin churches experiencing some inconvenience from their different mode of computing time, it was proposed, by an abbot of Rome, called Dyonisius Exiguus, to adopt a new form of the year, with a new general era, which, consonant to their religion, should commence with the first existence of Christ upon earth, in a mortal nature. This proposition was adopted by the christians, and the *incarnation* or time when Christ entered the virgin's womb was fixed as the great event or epocha from which they were to calculate their era; but they retained the Roman division of the year into months, as also the names of those months. It is to be observed, that the Romans had ever since the time of Numa Pompilius commenced their year on the calends of January, that is, on the first day of that month; but the christians now, from a pious zeal in their own religion, having fixed upon the *incarnation* which according to the Roman computation of the months, they ascertained to be the 25th of March, as the day of the commencement of their era, fixed that day also as the day upon which their year was in future to com-

mence. This prevailed for some time, but as it occurred to some good christians, that the years of a man's life were not numbered from the time of his conception, but from that of his birth, which must have been nine months afterwards, a difference in the commencement of the year took place among the christian churches throughout Europe, some adopting the day of Christ's *birth*, to wit, the 25th of December, as the commencement of the year, others adhering to that of his *incarnation*, and others again to the old Roman method of the calends of January, which last happened to be also the day of Christ's *circumcision*. The result was, that different nations, and indeed different writers, considering the subject rather in a temporal than in an ecclesiastical point of view, regulated the commencement of their *civil* year in their own way, still however computing from the supposed commencement of the christian era; from which disagreement it is supposed, that an error of one year at least, if not two, in the number of years elapsed of the christian era, has crept into the vulgar computation now generally in use throughout Christendom.

Although the Roman calendar had been regulated by Numa Pompilius, and afterwards by Julius Cæsar, yet as astronomy was far from being so completely understood in those days as it was afterwards even in the sixteenth century, it was found in the lapse of several centuries, that the Roman computation disagreed much with the motion of the earth, and that the holy feast of Easter, which was dependent on the vernal equinox, had got quite out of its place. Pope Gregory, therefore, in the year 1582, to counteract so great an inconvenience to the church, procured a thorough correction of the Roman calendar, and by a bull commanded all the Catholic states of Europe to adopt his correction, prescribing in the same bull also, that the commencement of the year should for the future be on the first day of January. This regulation, as may be supposed, was conformed to by most of the Catholic states: but the Protestants at first peremptorily refused to receive it; though at last, from the obvious propriety of the measure, it met with a general reception even among them. England, Russia, and Sweden held out in opposition to it longer than any, and it was not till the year 1751, that an act of parliament was made, (stat. 25, Geo. 2, cap. 23,) prescribing the first day of January to be deemed for the future, throughout all the British dominions, the first day of the year, and such alterations in the common English calendar were directed also as brought it to be the same as the Gregorian, then generally in use throughout the most of Europe.

As the British colonies in America, now United States, naturally adopted the mode of computation practised by their mother country, it is materially important to them to know the computation used in England by the historians of that country from the adoption of the christian era in the time of Dyonisius before mentioned, or at least from the time of the first British settlements in America, to the alteration of the style in the year 1751. It is alleged by Dr. A. Holmes, in his very judicious work—"American Annals," (Note I, annexed to his second vol.) "that *Beda*," (sometimes called the *venerable Bede*, the oldest English historian except one, and who lived from the year 673 to that of 735, about a century after Dyonisius Exiguus,) "took the Christian era from Dyonisius, and used it in all his writings; and by that recommendation of it occasioned its adoption and use in Great Britain, and the western parts of Europe." Although the Doctor does not expressly allege in the above cited note, that *Bede* adopted the *commencement of the year* used by Dyonisius, to wit, the *incarnation*, the 25th of March, yet in the text to which it is subjoined he strongly leaves that inference. But I find that a contrary opinion as to *Bede* is held by the anonymous writer of a learned "Dissertation on the ancient manner of dating the beginning of the year," (published in the Annual Register for 1759, a few years after the last alteration of the style in England,) who is of opinion that Bede commenced the

year at the *nativity* of Christ, at least in some instances, and cites a passage from him in proof thereof, wherein he plainly places January among the first and not among the later months of the year. The same writer proceeds to trace this subject in the following manner ;—"From *Bede's* time quite down to the Norman conquest, the constant way of computation seems to be from *Christmas-day*. The *Saxon Chronicle* also, (which comprises a period from the birth of Christ to the death of king Stephen in the year 1154,) begins the year from the *nativity* of our Lord."

"After the conquest, *Gervase*, a monk of Canterbury, in the preface to his chronicle, takes notice of many different ways of computation in his time, that is, at the end of the twelfth, or the beginning of the thirteenth century. He says, that some computed from the *annunciation*, some from the *nativity*, some from the *circumcision*, and others from the *passion* of our Lord. The solar year, continues he, according to the custom of the Romans, and of the church of God, beginning from the calends of January, (circumcision-day ;) but he rather chooses to fix the commencement of it to *Christmas-day*, because we compute the age of men from the day of their birth."

"This shows there was no standing, fixed rule of computation in *Gervase's* time ; and the following observation confirms it, not only in his age, but also for several centuries after him. Matthew Paris, Matthew of Westminster, Ralph de Diceto, and Polydore Virgil, place the coronation of William the conqueror upon Christmas-day, A. D. 1067, that is, these authors begin their new-year with that day, at least in this instance ; whereas Thomas Walsingham, Roger de Hoveden and John Brompton, all refer it to Christmas-day, A. D. 1066, which proves that they do not in this place begin the year till after that day."

This writer further observes, that "Thomas Walsingham, who lived in the fifteenth century, although he was one of the most accurate of our monkish historians, does not always count from the same day." He adduces two instances to prove, that "he sometimes begins the year from the *circumcision*," (first day of January,) "and sometimes from the *nativity*," (twenty-fifth day of December ;) for which he supposes the reason to be, "that in his *Ypodigma Neustræ*, he writes as a Norman, and that they computed the year only from the *circumcision*, whereas in his History of England he writes as an Englishman, who in his time," (about the time of Cabot's voyage,) "generally reckoned from the *nativity*."

"Hitherto nothing of our late custom of computing from the *annunciation*, has appeared in any of our old historians, except the bare mention of it in *Gervase*. There is good reason to think it began about the beginning of the reign of king Edward, IV. ; " which was in 1461. In confirmation of this the author of this dissertation adduced the history of Croyland Abbey, and also a biographical account of William of Wickham, written by Thomas Chandler, who was chancellor of Oxford from 1458 to 1462, who dates the beginning of the year from the *annunciation*, and "about 15 or 16 years after," he says, "this custom" of beginning the year with the *annunciation*, that is, the 25th of March ; "seems to have been fully settled."—This deduces the practice of the English historians nearly down to the time of Cabot's commission.

"At the reformation in England, in Henry the eighth's reign, in the early part of the sixteenth century, both the civil and the ecclesiastical authority interposed, to fix the commencement of the year to the feast of the *annunciation*, by adding the following rubric to the calendar immediately after the table of moveable feasts for 40 years, viz. " Note, That the supputation of the year of our Lord, in the Church of England, beginneth the 25th of March, the same day supposed to be the first day upon which the world was created, and the day when Christ was conceived in the womb of the Virgin Mary ;" which stood thus

down to the Savoy conference, soon after the restoration, when it was thought proper to retain the order, and drop the reason given for it, and in this shape it was continued down to the late parliamentary correction of the calendar, (in 1751,) which brings it back to the first of January, and is indeed the only legal settlement of it for civil affairs, for the rubric above mentioned settles only the supputation of the Church of England, and says nothing of the civil government, which seems to have never used any other date than that of the king's reign, till after the restoration, not even in common deeds. During the usurpation of Oliver Cromwell, the years of our Lord seem to have been introduced, because they did not choose to date by the years of the King's reign, and continued for convenience afterwards, without the interposition of legal authority."

"Our neighbours the Scots, from time immemorial, have invariably observed the 25th day of March as the first day of the year, till November 27th, 1599, when the following entry was made in the books of the privy council: *On Monday proclamation made be the king's warrant, ordaining the first of January, in tyme coming, to be the beginning of the New-Year, which they have as constantly followed ever since.*"

As supplementary to the foregoing extracts from the before mentioned dissertation, it may be observed, that the neighbouring kingdom of France had also different dates for the commencement of their year at different periods of time. "During the reigns of the Merovingian race, the French *year* began on the day whereon the troops were reviewed, which was on the first day of March. Under the Carolingians it began on Christmas-day; and under the Capetians, on Easter day, which last still remains the beginning of the French *ecclesiastical year*," (unless altered by the late revolution,) "but for the *civil year*, Charles IX., appointed in 1564, but a few years before the pope's bull for that purpose before mentioned,) that for the future it should commence on the *first of January*." See *Chambers's dictionary*, *verb.* year.

It will be acknowledged, we may suppose, that this variance in the commencement of the year would not affect the dates of any events mentioned to have occurred *out* of the space of time contained between the first of January and the twenty-fifth of March. It is true that those who compute the christian era from the *incarnation* or 25th of March, vary one whole year from those who compute it from the calends of January; but that variance is only in the number of years which have elapsed from the birth of Christ. It does not affect the date of any intervening event, occurring in the space of time to which those who calculate from different commencements of the year, affix the same date as to the year, that is, in the space of time between the 25th of March and the first of January next succeeding. To save much reasoning, necessary to elucidate this, I will beg leave to cite a scientific authority upon the subject. In *Keil's Astronomical Lectures*, (lec. 28,) published before the alteration of the style in 1751, are the following passages;—"The English reckon from the feast of lady-day, 1718, (that is, from the 25th of March, 1718,) that there are completed 1717 years; but from the birth of our Lord, to the feast of the Nativity of the year 1717, they number only 1716 years elapsed; whereas all the rest of the christian world count 1717 years.—But yet for all this, the English, for the greatest part of the year, design it by the same number that the rest of the christian world does; but for three months, viz. from the calends of January to the 8th of the calends of April," (that is, from the first day of January to the twenty-fifth day of March,) "they write one less." This is illustrated by the instance put by our American annalist, Dr. Holmes, in the note last cited from him; "it was customary" (says he) "to give a *double date* from the 1st of January to the 25th of March. Thus, February 8th, 1721, was written February 8th, 17 $\frac{20}{21}$." This demonstrates, that in the remaining part of the year there was no difference between the English

and the rest of Europe, as to the date of the year. It is true that the ten days thrown out by pope Gregory, in his reformation of the calendar, made that much difference from the English computation, in the days of the months, but as to the date of the year, which is the present question, it has no effect.

Hence, therefore, as the commencement of the reign of Henry VII. who made this patent to Cabot, and whose reign is therein alluded to, is an event which occurs in that part of the year, wherein all "the christian world" agree in their number, and this too whether it be fixed on the day of his accession to the throne, when he gained the battle of Bosworth from Richard III., which was on the 22d day of August, 1485, or on the day of his coronation, which was on the 30th of October following, in the same year, and the patent or commission to John Cabot bears date on the 5th of March, in the *eleventh* year of the reign of Henry VII., we are enabled to affix to this commission the year of Christ, as well as that of the reign of the king. For, calculating the commencement of his reign from either of those events, to wit, the battle of the coronation, it will be found, that the 5th of March in the *eleventh* year of his reign, must be either in the year 1495 or 1496, according to the time of the commencement of the year 1496. If the commencement of the year 1496 is fixed on the 25th of March, agreeably to *old style*, the 5th of March of the *eleventh* year of his reign, will undoubtedly be in the year 1495, which is the year to which Hackluit, Harris, and Robertson have referred the date of this commission; but if the commencement of the year 1496 is fixed on the first day of January, agreeably to *new style*, the 5th of March of the *eleventh* year of his reign will be in the year of Christ, 1496, to which year Rymer, Rapin and Chalmers have referred its date.

Before this subject is closed, it will be proper to take notice of another note subjoined by Dr. Holmes in the *first* volume of his "American Annals," (p. 15, anno 1495.) It is as follows: "Henry was crowned Oct. 30th, 1485. If *that* year be reckoned the *first* of his reign, this commission is rightly placed by Hackluit, Robertson, and others, in 1495; but, if the first year of his reign be reckoned from 1486, the commission must be placed, where Rymer and some others have placed it, in 1496." This judicious annalist has accordingly adopted the former opinion, and in his work referred the date of the commission to the year 1495. But it must be observed, that his reasoning here is either very inaccurately or very obscurely expressed. The word "from" being always *exclusive*, if the year 1486 is thrown out of the computation of the eleven years altogether, it would place the date of the commission in 1497, contrary to his inference. Although the *end* of "the first year of his reign would undoubtedly be in 1486, to wit, either on the 22d of August, or 30th of October of that year, yet one year of his reign, being then complete and ended, it must be counted as *one* in the computation of the eleven years. The progression then would bring the end of the *tenth* year of his reign to the 22d of August or 30th of October, 1495, when the *eleventh* year of his reign would commence, and would end on the 22d of August, or 30th of October, 1496. It would then be obvious, that the 5th of March in the *eleventh* year of his reign, would be referable either to the year 1495 or 1496, according to the commencement of the year 1496, as before explained. But as the *new style*, that is, the computation of the year from the first day of January, is now generally adopted in the United States, as well as in Europe, perhaps by force of the English statute before mentioned, and when a year is mentioned in history, it is so computed in the mind of almost every reader, unless otherwise expressed, it would seem to be most proper to refer the date of the patent or commission to Cabot and his sons to the year 1496. For the same reason also, the author has thought it best, throughout this work to adjust the chronology of it according to what is called *new style*, commencing the year always on the first of January. It is hoped, therefore, that although the date of

this commission is a matter of little importance, yet, as the same variance in the commencement of the year pervades every part of the early history of the British colonies in America, the reader will excuse the length of this note.

NOTE (B) p. 19.

Mr. Holmes, in his "American Annals," Note I, at the end of his first volume, expresses himself as satisfied, that Cabot sailed as far south as Cape Florida. It is with great diffidence, that I venture on an opinion different from that of so accurate and judicious a writer. The passage which he cites from Peter Martyr, as the ground-work of his opinion, is according to him, thus: "Quare coactus fuit, uti ait, vela vertere, et occidentem sequi: tetenditque tantum ad meridiem, littore sese incurvante, ut Herculei freti latitudinis ferè gradum æquarit: *ad occidentemque pfectus tantum est, ut Cubam insulam a lævo, longitudine graduum pene parem, habuerit.*" To which he immediately afterwards adds,—"Obscure as this passage is, it satisfies me, that Cabot sailed to Cape Florida, which lies in 25 deg. 20 min. north lat." From the manner in which the last sentence of the above passage from Peter Martyr, is printed in his "Annals," (to wit: in Italics,) it is to be inferred, that he laid a stress upon this sentence in particular, as warranting the opinion he gives. But to come fairly at the meaning of the passage, every part of it should be taken into consideration; and it may be thus rendered into English: "Wherefore he was forced, as he says, to turn his course toward the west; and he stretched so far *to the south*, the shore bending in, as to be almost in the same degree of *latitude* as the Mediterranean: and he went so far *to the west*, as to have the island of Cuba lying on his left hand, almost equal in the *longitude* of degrees." That the word "meridiem" is here to be rendered *south* is evident, not only because it is often so used according to the best Latin dictionaries, but that otherwise it would be here unintelligible, unless indeed it should be said to mean, "towards the equinoctial line;" in which, it would be synonymous to *south* in this case. (N. B. In pope Alexander's bull, in 1493, before referred to, which is published at large in the original Latin, in Hazard's Collections, vol. 1, p. 5, the word "meridiem" is used as synonymous to *Antarctic* or South Pole.) Then the extent of Cabot's voyage *to the south*, is here very clearly confined *to the same degree of latitude as the Mediterranean*; almost to it, but certainly not beyond it. Now, the mouth of the Mediterranean, or Straits of Gibraltar, are well known to be in about 36° north lat., which brings the voyage here spoken of, along the coast of America no further *south* than Roanoke, or Albemarle Sound, in North Carolina. But the word "ferè," *almost*, is not to be altogether rejected as a mere expletive; it plainly intimates that *Cabot did not come down to the 36th degree of north latitude*, and being indefinite as to the precise minute or degree above 36°, leaves the extent of his voyage *southerly*, to be collected from circumstances only, with this express restriction, that it did not reach quite to 36°. A strong inference is to be drawn also, from the agreement of so many respectable historians, besides *Oldmixon*, before cited in the text, who speak of Cabot's voyage, as extending *southerly* only to the 38th degree of north latitude. *Harris*, in his Collection of Voyages, Vol. 2, p. 191, edit. 1748, and *Robertson*, in his History of Virginia, both limit it to the 38th degree. There must have been some solid ground for this coincidence of opinion. *Harris* cites *Robert Fabian*, as expressing himself, that Cabot sailed to the 56th deg. of north lat., "and from thence he ran down to the 33°, along the coast of the continent of America, which, as he (Fabian) says, was afterwards called Florida." *Fabian* lived and wrote in the reign of Henry VII. and must have had some substantial authority for fixing it to the 33°; most probably, from the Journal of the Voyage, then newly published, and fresh in the memory of every literary man. This

agrees also, with what is a well known historical fact, that the Spaniards, after Ponce de Leon's discovery of Florida, gave that name indefinitely, to the whole of the coast connected with the land he discovered, as appears from their subsequent claims, in virtue thereof, to both the Carolinas, even as high up as the 37° of latitude. (See Harris's *Voyages*, Vol. 2, p. 275. *Mod. Univ. Hist.* Vol. 44, p. 41.) To proceed, however, with the above extract from Peter Martyr, particularly upon that part printed in Italics by Holmes, and on which he seems to rely; "ad occidentemque profectus tantum est, ut Cubam insulam a lævo, longitudine graduum penē parem, habuerit." Although this passage is obscure, as he observes, yet I think it may be understood without carrying Cabot down to Cape Florida. Having ascertained how far *south*, or towards the Equinoctial, Cabot went, to wit: not farther than the latitude of the Mediterranean, Peter Martyr then proceeds to show how far *west* he went, and in doing this, he attempts to ascertain the degree of *longitude* to which he went *west*; and it is well known, that the only way of ascertaining the situation of places on the globe, is by ascertaining their latitude and longitude. When he makes use of the expression, "longitudine graduum," longitude of degrees, I understand him to mean *longitude* as ascertained by the *degrees* on the equator, in the same manner as *longitude* is now and was then, calculated from some first meridiem, and in contradistinction to the longitude or length of distance, which the ship had run from her place of departure. But the longitude of Cape Maize, the easternmost end of the island of Cuba, is 74° 25', west from London, as appears from the most authentic tables and maps of the West Indies. A meridian line drawn through Cape Maize, would intersect the coast of North America a little to the north of Cape May, one of the capes of Delaware bay, in about 39° of north latitude. The coast there trending southwesterly, Cabot might still be said to have proceeded *westerly* as soon as he reached the 39° of latitude; and thus proceeding westerly, he might with perfect propriety, be said to have the island of Cuba on his left hand, as soon as he had passed the meridian of Cape Maize, above mentioned. Then from Cape May to the 38° of latitude, (the point of division on the coast, between the states of Maryland and Virginia,) which is contended to be the utmost extent of his voyage towards the *south*, he was sailing with Cuba on his left, agreeable to the passage in Peter Martyr, and still more so, if it is supposed that he extended his coasting voyage to the 36° of latitude. It ought to be remembered, that Peter Martyr and Sebastian Cabot were cotemporaries. When Martyr, therefore, wrote his book *De Orbe Novo*, from whence the preceding passage was probably extracted, his knowledge of the coast of North America, in a relative situation to that of Cuba, must have been very limited indeed; and possessed, as most navigators were at that time, with the idea of there being a free passage to the East Indies by holding a *western* course, he might with no great impropriety have expressed himself as he did with regard to Cuba, and yet not have meant that Cabot had continued his route as far as Cape Florida. An additional reason for this supposition, might be drawn from the words "penē parem," almost equal; not quite to the same degree of longitude as Cuba, but *almost* to it. But if he had sailed to Cape Florida, he would have been not only almost to the same degree of longitude, but almost past it, or very near to the western extremity of that island. It would be difficult also, in such case, to reconcile the limitation which Martyr had just before given, to what may be called the *southing* of Cabot's voyage, when he expressly confines it to the northward of the latitude of the Herculean sea, which without doubt, means the mouth of the Mediterranean, and which is, as before mentioned, in about 36° north latitude.

It may not be improper also, to make a few observations on one of the authorities cited by Mr. Holmes, (*Annals*, Vol. 1, p. 18, note 2, sub-anno 1497,) in support or illustration of the extent of Cabot's voyage, to wit: the *Mod. Univ. Hist.*

Vol. 40, p. 378. Although that voluminous historical compilation is a most useful work, yet, as Doctor Johnson has somewhere observed, it has been executed in a very *unequal* manner; which seems indeed to be an unavoidable result, from its being the joint labour of several men of unequal talents, learning, or industry. In that part which relates to America, especially in respect to Florida, it does not appear to have been done with that fidelity to historical truth, which ought ever to be the polar star of an historian. About the time when these volumes, which relate to America, were compiled, the British and Spanish nations were at war, and the two Floridas presented to the view of the former, a very convenient *arrondissement* to their colonies on the continent of North America. In the 39th Vol. p. 127, they speak of an expedition, which was at that time fitting out by the British for the conquest of Florida, and in the same Vol. p. 123, 129, 234, they manifestly endeavour to impress their readers with the idea, that Great Britain had just pretences to a prior right to that part of America by reason of the prior discovery of it by Sebastian Cabot; though in the same volume, p. 129, they acknowledge that this prior right of discovery, was the only support of their claim. Accordingly, in the 40th Vol. p. 378, (the place cited by Holmes in his Annals,) which appears to have been written just after the acquisition of Florida by Great Britain, by the treaty of peace in 1763, acknowledging in the text, that the question, who were the first discoverers of Florida? was a common topic, much agitated, but little known, and confessing that the whole dispute was then immaterial on account of the late cession of that country under the treaty; they nevertheless subjoin thereto a note, and insert the same again in the text, in Vol. 44, p. 2, and 41: containing proof, as they suggest, from Sebastian's own words in 1496, that Florida was discovered by Sebastian Cabot long before Ponce de Leon's voyage. The passage they cite for that purpose, though they do not say from whence they take it, after describing how far Cabot explored the continent northward, make him to say, "I turned back again, and sailed down by the coast of that land, toward the equinoctial, (ever with an intent to find the said passage to India,) and came to that part of this firm land which is now called *Florida*, where my victuals failing, I departed from thence, and returned to England." But whoever attends to what was before observed, that the Spaniards, in virtue of Ponce de Leon's discoveries, claimed all the southern part of the continent of North America to an indefinite extent northward, at least so as to comprehend the Carolinas, and that the name of Florida, was by them so indefinitely applied to all that part of the coast along those states, will at once perceive, that this passage by no means proves what it was cited for. Cabot might have sailed "to that part of the firm land *then* called Florida," and yet sailed no further south than the 38th or 36° of north latitude. It clearly then appears, that what the authors of the *Mod. Univ. Hist.* have said upon the subject, cannot be admitted as very cogent authority.

NOTE (C) p. 19.

History seems to present mankind to our view only in three distinct states or conditions: the hunter, the pastoral, and the agricultural. In the first of these, which is that in which the aborigines of North America were found by Europeans, the human race necessarily requires a greater superficies of the earth for its support and existence, than in either of the other two. But as it is manifest, that if all nations resolve to live in this state, there would not be sufficient room on the earth for even the present number of its inhabitants, without any future multiplication thereof, it seems necessarily to follow, that it is lawful to compel those who live in this manner, either to occupy as small a space of country as possible for them in this state, or to forsake that mode of life and become cultivators of the earth. From hence it is obvious, that our ancestors, the English, were guilty

of no infringement of natural right, when they attempted to occupy a portion of the continent of North America, whereon a few tribes of savages were scattered in thin population, and whose subsistence principally depended on the prey of the forest. While no wanton cruelties were practised towards them, nor offensive violence was offered to their persons or personal rights, there seems to have been no injustice in compelling them, either to contract their limits, or to cede a portion of their territory to those of their fellow-creatures who would cultivate and improve it. It must be observed, however, that this reasoning does not go in justification of the conduct of the Spaniards in the conquest of either Mexico or Peru, for there civilization had carried the population of the earth to nearly as high a pitch as in the most improved countries of Europe.

The question, then, on the rights of prior *discovery* or prior *occupancy* with respect to America, seems to have been chiefly confined to the contests between Europeans for their respective portions of that extensive continent. The general reasoning, just before used, seems to oppose the idea, that a right resulting to one nation merely from first *discovering* an island or continent, without some actual *occupancy* thereof following such discovery in a reasonable time, should forever thereafter preclude another nation from taking possession of the same. The manifest inconvenience to mankind, which would result from this principle, if allowed, appears to demonstrate its absurdity. The right of prior *discovery* is then, necessarily dependent on subsequent *occupancy*; and as independent nations never have yet agreed to fix any precise limited time, within which the latter shall follow the former, the question, like all others in the law of nations, rests on the *reasonable* construction of mankind. It is upon this construction, and not on the pretended right of prior discovery by Cabot, that the English nation were justifiable in taking possession of that part of the continent afterwards denominated by them South Carolina and Georgia. It had been long abandoned by both the French and Spaniards, was derelict property, and was then unoccupied by either of those nations.

It must be confessed, that considerable difficulty often attends the right of occupancy with respect to the *limits* or extent of the territory, which shall be said to be so gained by occupancy. Where a colony of a few hundreds of individuals sit down upon so extensive a continent as America, or as either the northern or southern half of it, it would be absurd to say, that such an occupancy would entitle them to the whole of such a continent. Some limitation to such a right must always be made; and what this should be, has for the most part occasioned the many contests, which have taken place between European powers in regard to America. The ignorance of the people of Europe, of the great extent of the continent of North America towards the northwest, at the time of their first emigrations thereto, will in some measure apologise for the English monarchs in granting, and for their subjects in requesting patents of colonization, comprehending such enormous territories as some of them did, extending in parallelograms of the surface of the earth from the Atlantic to the Pacific Oceans. And yet on such a grant, was it seriously contended, at the time of the first colonization of Maryland, that it was unjust to lop off from Virginia even so small a portion of that extensive dominion, as now composes the former state. This indeed, was only a contest between the subjects of the same sovereign. More serious bickerings, producing one or two long and bloody wars, afterwards occurred between the maritime powers of Europe, with respect to America; and yet, no sure and permanent rule has yet been ascertained. The claims of the French, while they possessed Canada, in virtue of their right to that province, would have hedged in the British colonies, within that narrow slip of the continent which lies between the Alleghany mountains and the coast; but the right was decided, without recurring to the principle, on the plains of Abraham. The Spaniards, who seem

least of all to set any bounds to their claims both of discovery and occupancy, brought the subject into litigation between them and England, in the year 1771, by pretending, that because the Faulkland or Malouine islands lie within a hundred leagues of the Straits of Magellan, they were to be considered as a part of South America, and therefore their undoubted property, by the rights of both discovery and occupancy. The superiority of the British navy, however, compelled the Spanish court to the mortifying necessity of disavowing the violence, which the Spaniards had been guilty of, in dispossessing the British of those islands, and to give orders, that things should be restored precisely to the same state in which they were before that outrage, contenting themselves with gravely declaring at the same time, that this should not affect the question, of the prior right of sovereignty over those islands. The uncertain extent of the claim of occupancy, was again exhibited, in a subsequent contention between the same nations, in the year 1790, relative to a small settlement made by the British in a part of the northwest coast of America, called *Nootka* sound, lying in about 50° of north latitude. In the year 1788, a party of English, with intent to establish a fur trade on this coast, purchased some land of the Indian chief at this sound, built a house thereon, and erected a fortification for their protection. While they were thus in possession of the country at this place, a squadron of Spanish ships arrived, seized their vessels and stock of furs, and dispossessed them of their settlement. The Spaniards could have had at this time, no actual settlement or occupation of the coast, higher up than a place called *San Francisco*; which, according to a journal of a voyage made by an American captain in that trade, in the year 1804, (published in the American Register for 1803,) was even at that time the most northern *Presideo* or district of the Spaniards on that coast, and which is, as he says, in the latitude of 37° 47', so that a space of the continent along the coast, of twelve degrees at least, about eight hundred miles, intervened between that *Presideo* and the place where the English attempted a settlement. It ought to be observed, that this same journalist explains a *Presideo* to consist only of a missionary or priest, for the conversion of the Indians, with a guard for him of five Spanish soldiers, under the command of a serjeant or corporal; which could scarcely be called a colony or settlement for the occupation of the country. But the Spanish claim did not stop at *Nootka* sound, but extended as high as the Russian settlement or colony at Prince William's sound or Cook's river, which is in about sixty degrees of north latitude; so that they would claim a coast of fourteen hundred miles in extent, without a single Spaniard settled thereon. It might be presumed that so haughty a nation as the English, would not yield to this. Atonement and compensation were demanded. The result was a *convention* between the two nations, signed by their respective ministers, on the 28th of October, 1790, in which, after the stipulation for a restoration of the settlement, and compensation for the injury to the British subjects, a principle seems to be recognised, whereby each nation was at liberty "to carry on commerce, or make settlements on the coasts of the Pacific Ocean or South Seas, *in places not already occupied*; subject nevertheless to the restriction, that the British should not navigate or carry on their fishery in the said seas, *within the space of ten leagues from any part of the coast already occupied by Spain.*" The Spaniards appear to have here surrendered their claim under a right of *prior discovery* of the continent; and it would seem, that although the limits of ten leagues is here applied to the fisheries on the coast, yet it would probably operate also as a limitation to the right of occupancy. But from these circumstances we may infer, that neither of these three nations will be disposed to pay much regard to the claim of our young American states to their share of this coast, as a part of Louisiana. However, a sufficiency of our purchase from the emperor Napoleon, will probably still remain on the western side of the Mississippi, for the formation of many sister states. We have only to wish, that our *union* may live to see it.

NOTE (D) p. 43.

The statutes here alluded to were the 5 *Rich.* 2, c. 2; 13 *Eliz.* c. 3; and 14 *Eliz.* c. 6. By the first of these, (viz. 5 *Rich.* 2,) "all manner of people, as well clerks" (clergymen) "as others, (except only the lords and other great men of the realm, and true and notable merchants, and the king's soldiers,) were prohibited from passing out of the realm without the king's special license, upon pain of forfeiture of all their goods; and the master of any vessel, who carried such persons out of the realm, should forfeit such vessel." By the statute of 13 *Eliz.* "If any native or denizen of the realm should depart the realm without the queen's license, and should not return again within six months either after warning by proclamation, or after the expiration of his license, he shall forfeit to the queen the profits of all his lands during his life, and also all his goods and chattels. Fraudulent assurances made by fugitives of their lands and goods, to deceive the queen, should be void; but the offender should have restitution upon submission." The statute of 14 *Eliz.* only regulated the mode in which the queen should take the profits of the lands of fugitives. The two last of these statutes, (viz. those in the reign of *Eliz.*) being temporary, expired at the queen's death. *Dyer*, 176, b. note (30.) That of 5 *Rich.* 2, was repealed in the next reign after Elizabeth, by the statute of 4 *Jac.* 1, c. 1. Notwithstanding this, a clause of dispensation of "the statute of fugitives," is inserted in the ninth section of the charter of Maryland, granted to lord Baltimore, in 1632. (8 *Car.* 1.) The repeal of the statute of 5 *Rich.* 2, by that of 4 *Jac.* 1, might possibly have been construed to extend only to Scotland, to which the whole of the statute of 4 *Jac.* 1, seems to relate, and appears to have been made solely to remedy inconveniences, which would otherwise have accrued from the recent union of the two kingdoms. All of these three first mentioned statutes, however, were in force at the time when Sir Humphrey Gilbert obtained his patent, and a special dispensation was therefore essentially necessary, (inasmuch as dispensations were then held to be legal,) for such persons as should go out of the realm, even with the laudable intention of settling a colony. In those times there seems to have been some doubt also, whether the common law, without any statute for that purpose, did not prohibit any subject from going out of the realm, without special license previously obtained. *Dyer*, 165, b. 3 *Inst.* 178. *Lane* 43.—The common law on this subject, as well as the before mentioned statutes, evidently originated from the intolerable interference practised by the popes of Rome, during the reigns of Edward III. and Richard II. in the political transactions not only of England, but of every nation in Europe. Subjects were invited to Rome to concert schemes, ostensibly for the good of the church, but in reality to carry on operations against their own government, and though committing the most atrocious acts of treason, were assured of the powerful protection of the Roman pontiff. But the common law seems to be now settled, that every man may go out of the realm, for whatever cause he pleaseth, without any license for that purpose; though it seems to be settled also, that the king by his prerogative, and without any help of an act of parliament, may prohibit his subjects from so doing; but this must be done by some express prohibition, as by laying on an embargo, or by writ of *Ne exeat regno*, which writ is never granted *universally*, but only to restrain a *particular* person, upon oath made, that he intends to go out of the realm. This writ appertains more particularly to a court of chancery, and is adopted as a common process of that court, to prevent debtors from absconding out of the jurisdiction of that court, with the intent to evade the payment of debts, or to eloin property. 4 *Bac. Abr.* 168-9. 1 *Bl. Com.* 265. 3 *Brown's Ch. Rep.* 218. This we may suppose to be still the law in Maryland, since the writ of *Ne exeat provinciam*, in similar cases, seems to have been adopted as unquestionable practice in the Maryland court of chancery, prior to the revolution. See the case of

Somerville vs. Johnson, (Feb. 1770,) 1 Harris & M'Henry's Rep. 348, where it issued to prevent a person from removing and carrying with him, negroes from Maryland to Virginia, to which negroes the complainant had an equitable claim.

It is said also, that by the common law of England, the king may restrain his subjects from going abroad by *proclamation*. 4 Bac. Abr. 168. 4 Bl. Com. 122. This may be understood, as lawful in such cases as are spoken of by the writers on the Law of Nature and Nations, (particularly by Grotius and Burlamaqui,) where subjects leave the territories of the state in large companies.

The general right of expatriation, would involve a discussion of too much length, to be here introduced. It may, however, perhaps be excusable to suggest a doubt, whether the time is not now arrived, when true policy dictates, that the importation of foreigners into the United States, and their easy access to citizenship among us, should no longer be encouraged. It is very questionable indeed, whether the nature of our republican institutions would admit of a population of our extensive territories equal to that of an European state. That foreigners should be permitted to reside among us under the protection of our laws, without the political right of office or right of election; but that their children born here, should acquire citizenship by their birth, in its fullest extent, seems to present to them no unreasonable hardship, and it is believed, would not operate much against the importation of them. The admission of foreign seamen also, to the protection of citizenship, must, in the nature of things, forever embroil us in quarrels with the most powerful maritime nation in Europe. Our situation in this respect, presents a new case in the Law of Nature and Nations. For one whole race of people, speaking the same language,—using the same habits and customs,—living under the same laws,—and connected by the ties of blood and family, to be suddenly disjoined, and placed under two distinct governments, is a political incident, the exact parallel of which is not to be found in the records of history. It is a case, which the writers upon National Law, have never contemplated, and their general reasoning, therefore, vague and inconclusive as it is, on the right of expatriation, can, in relation to Britain, have no application to us.

NOTE (E) p. 48.

Letter from Sir Humphrey Gilbert to Sir George Peckham, taken from Hazard's Collections, vol. 1, p. 32.

Sir George, I departed from *Phymouth* on the eleventh of June with five saile, and on the thirteenth the Barke *Rawley* ran from me in faire and cleere weather, having a large winde. I pray you solicit my brother *Rawley* to make them an Example of all Knaves. On the third of August wee arrived at a port called Saint *John's*, and will put to the Seas from thence (God willing) so soon as our ships will be ready. Of the Newfoundland I will say nothing, until my next Letter. Be of good cheere, for if there were no better Expectation, it were a very rich demaynes, the country being very good, and full of sorts of victuall, as fish, both of the fresh water and Sea-fish, Deere, Pheasants, Partridges, Swannes, and divers Fowles. I am in haste, you shall by every Messenger heare more at large. On the fifth of August, I entered here in the right of the crown of England, and have engraven the armes of *England*; divers *Spaniards*, *Portugals*, and other Strangers, witnessing the same. I can stay no longer; fare you well with my good Lady; and be of good cheere, for I have comforted my selfe, answerable to all my hopes.

From Saint John's, in the Newfoundland, the 8th of August, 1583.

Your's wholly to command,

No Man more,

HUM. GILBERT.

NOTE (F) p. 53.

As a supplement to the complimentary contest between the queen and Sir Walter, noticed in the text, may be read a letter which he wrote to Sir Robert Cecil, (with a view, without doubt, of having it shown to the queen,) during his short imprisonment, for having incurred her displeasure on an interesting occasion many years after his first introduction at court: "My heart was never broke till this day, that I hear the queen goes away so far off, whom I have followed so many years, with so great love and desire, in so many journeys, and am now left behind her in a dark prison all alone. I, that was wont to behold her riding like Alexander, hunting like Diana, walking like Venus, the gentle wind blowing her fair hair about her pure cheeks like a nymph, sometimes sitting in the shade like a goddess, sometimes singing like an angel, sometimes playing like Orpheus; behold the sorrow of this world! once amiss hath bereaved me of all. All these times past, the loves, the sighs, the sorrows, the desires, cannot they weigh down one frail misfortune? Cannot one drop of gall be hid in so great heaps of sweetness? I may then conclude, *Spes et fortuna, valete.*" It is to be remarked, (adds Hume, Hist. of Eng. ch. 44, note (S), that this nymph, Venus, goddess, angel, was then about sixty.

The imprisonment, alluded to in the above letter, seems to be explained by an anecdote, mentioned by Sir Walter's biographer, in his life prefixed to his History of the World, (3d edition, 1687,) as occurring about the year 1595: "Sir Walter having now deserted his naval employ, and become again a courtier, it was not long before he was seized with the idle court disease of love, the unfortunate occasion of the worst action of his whole life. For in the year 1595, I find him under a cloud, banished the court, and his mistress's favour withdrawn, *for de-virginating a maid of honour.* But why for this one action he should lie under the imputation of an atheist, and from a single crime get the denomination of a debauch, is the logic of none but the vulgar. But, to stop the mouth of fame, which is always open on such occasions, and to wipe out the infamy of the fact, he was shortly after married to the object of his love, the deflowered lady. Having, therefore, obtained his liberty, (for, *for this action he was imprisoned some months,*) and finding all things with an unpleasant aspect, he followed his genius of discovering new places and tracing nature in her more retired and hidden parts, thinking that absence, and a fortunate voyage, might reinvest him in his mistress's thoughts, and merit a new esteem." He set out, in the same year, it seems, on a voyage to Guiana, (for, by this time, he had assigned away all his right to the territories of Virginia,) and on his return, as he had conjectured, appears to have been somewhat reinstated in the queen's favour, being again employed in her service.

NOTE (G) p. 55.

The disagreement and confusion among all the writers on this voyage, as to the topography of the places referred to, render it almost impossible to ascertain with precision, where this island called Wokoken, was situated, or what river, or rather inlet, it was, which they first entered. These difficulties seem to be, in some measure, accounted for in the remarks of *Williamson*, in his Hist. of North Carolina, (a modern work, vol. 1, p. 40.)—"The discoveries of that officer, (says he, referring to governor Lane,) "cannot be understood by their original names; for every thing is changed, except the name of a small island. (Meaning, most probably, Roanoke island.) Rivers and sounds have lost their Indian names; inlets have changed their position; and the Indian tribes are exterminated. Haterash was the name of a small inlet, a little to the westward of Cape Hatteras."—(By which we may suppose him to mean,—to the south-westward of that cape. This inlet, called Haterash inlet, is laid down, nearly as

Williamson states it, on the map inserted in *Keith's Hist. of Virginia*, dated in 1738.) "The second inlet, to the westward (south westward) of the cape, was called Occam; and there was a third inlet, a few miles to the eastward (north eastward) of the present Ocracock, that was called *Wokoken*." From this it might be inferred, that the islands called by the natives, *Wokoken*, was adjacent to the inlet so called. This corresponds with Mr. Stith's supposition, (as stated by Mr. Burk in his *Hist. of Virginia*, vol. 1, p. 46,)—"that the island *Wococon* must lie between Cape Hatteras and Cape Fear, and that the distance from thence to Roanoke island might be thirty leagues." Could we place perfect confidence in what is stated by Mr. Williamson, with respect to the "third inlet called *Wokoken*;" it would be almost decisive as to the location of the *island* so called, for the inference, that the island was adjacent to the inlet, is too strong to be resisted. It would appear also from Mr. Williamson's statement, that the section of the bank which lay between *Wokoken* inlet and the present Ocracock inlet, was the island called *Wokoken*, and was (as he says) "about twenty miles long." The section of the bank, which lay between *Wokoken* and Occam inlets, he adds, "was called *Croatoan*." Burk, in his *History*, (*ibid.*) states, on the authority of Mr. Heriot, (one of the voyagers,) that this island, called *Wokoken*, was fifteen miles in length and six in breadth." But it may be suspected, that Burk here misunderstood what Heriot meant of Roanoke island, and applied to *Wokoken*; for, according to the best American geographers, (Morse and others,) the great sand-beach, which separates Pamptico sound from the ocean, "is scarcely a mile wide;" and *Wokoken* island must have formed a part of this beach. Although this sand-beach, from Mr. Williamson's account before stated, appears to be frequently changing its forms and dimensions from the breaches of the sea, yet it is not probable, that, even since the visit of Amidas and Barlow, it has diminished five miles in breadth. It is true, that the distance from the present Ocracock inlet to Roanoke island, (according to measurement upon some modern maps of North Carolina,) is full sixty miles, and *Wocoken* inlet being, as before stated, but a "few miles" to the eastward of Ocracock inlet, the distance from either inlet would be nearly the same, or "thirty leagues" as supposed by Stith; and it seems to be stated also, in Barlow's letter to Sir Walter Raleigh, preserved by Hakluyt, (according to Burk's *Hist. of Virginia*,) that the distance "from the harbour by which they entered," was "seven leagues;" a little more than one-third of the distance just mentioned. But it ought to be remembered, that most commonly the computation of leagues or miles by transient voyagers must, in the nature of things, be but loose estimation, and therefore liable to great uncertainty. The reckoning of their longitude by the log is so inaccurate as scarcely to deserve notice, and nothing can keep them right in their latitude but a daily observation. It is highly probable, that in this instance, after entering into Pamptico sound, through one of the before mentioned inlets, they advanced up it a considerable way to the northward before the boat was dispatched to Roanoke island, and they might therefore be induced to compute the distance from one of the inlets to the island much shorter than it really was. This supposition is strongly supported by the manner in which *Keith*, in his *Hist. of Virginia*, (p. 39,) has stated this fact.—"Eight of the company, in a boat, went up the river Occam, (one of the inlets into Pamptico sound as before mentioned, but generally supposed to mean the sound itself,) twenty miles; and next day in the evening they came to an island called Roanoke, which was about seven leagues from the place *where their ships lay*." It is possible then, that their ships might have advanced up Pamptico sound, and came to anchor in about "seven leagues" or twenty miles distant from Roanoke island. It seems also, that Barlow's letter, before mentioned, was translated from the original English into Latin, and might be either erroneously translated

or misconstrued. Upon the whole, therefore, it may be fairly concluded, that the island, called Wokoken, where Amidas and Barlow first landed, was a part of the great sand-beach, now called Core-bank, lying to the south-westward of Cape Hatteras, and the river, where they anchored, was one of the three inlets—Occam, Wokoken, or Ocracock, which let into Pamptico sound from the sea south-west of Cape Hatteras.

NOTE (H) p. 92.

It is not unworthy of notice, that king James had, in a few years after this period, (between the years 1608 and 1612) another opportunity of exercising his talents for the arts of peace, in planting English colonies in the province of Ulster in Ireland, upon those extensive demesnes forfeited by the rebellion and flight of the earls of Tyrone and Tyrconnel. Similar attempts had been made in the reign of his predecessor Elizabeth, on the forfeiture of the estate of the earl of Desmond in Munster; but, as Leland observes, "In those plantations the Irish and English had been mixed together, from a fond imagination, that the one would have learned civility and industry from the other. But experience had now discovered, that by this intercourse, the Irish learned only to envy the superior comforts of their English neighbours, and to take the advantage of a free access to their houses, to steal their goods and plot against their lives. It was, therefore, now deemed necessary to plant them in separate quarters." From this passage of the Irish historian, (who was partial enough to his own countrymen,) as well as from his whole work, it would seem, that the aboriginal Irish were, at this period of time, very little, if any, more civilized than the Indians of America, at the time of the first settlement of Virginia. The English colonists had, therefore, nearly the same difficulties to encounter in the one country as in the other. This historian, on this occasion, gives honourable testimony in favour of the plans and designs of James, and further observes, that "Ireland must gratefully acknowledge, that here were the first foundations laid of its affluence and security." See Leland's *Hist. of Ireland*, Vol. 2, p. 430, 431; and Hume's *Hist. of England*, at the end of ch. 46, in the reign of James I.

NOTE (I) p. 190.

The principal use of the notice we have taken of this abortive attempt to settle a colony in Newfoundland, is to show a probable chain of connection between this and a subsequent attempt made by the lord Baltimore, afterwards the proprietary of that province of Maryland, to make a settlement on that island, in a province there, which was granted to him under the name of Avalon. Notwithstanding the partiality which king James evidently had for the English Catholics, yet a very great majority of the nation being Protestants of one description or another, he was obliged to give way to the inclinations of that majority. Hence the penal laws against Papists, though against his wishes, were rigidly enforced throughout the kingdom. A few great men, however, by temporising and professing themselves of the Church of England, though really Catholics, were received at court by James with great cordiality. Among these was Henry Howard, earl of Northampton, one of the patentees of the grant here referred to. An additional cause also operated on the mind of James, which was the attachment which had been manifested by the Howard family to his mother, Mary, queen of Scots. This Henry Howard was the younger brother of Thomas Howard, fourth duke of Norfolk, who was beheaded in the reign of Elizabeth, for holding a treasonable correspondence with the queen of Scots. "Alas!" said Mary, when she was told of his death, "what have the noble house of the Howards suffered on my account!" James entered into all these feelings. He had scarcely arrived in London, on his first accession to the throne, before he resto-

red to the family their lost honours, and created Henry earl of Northampton, who in compliance to James, professed himself a Protestant. The main branch of the family, however, that is, Thomas Howard's son, and grandson, and their descendants, continued Catholics until about the middle of George the third's reign. Henry made use of his favour with James, on all occasions, to befriend the Papists. Being warden of the Cinque Ports, he connived at the entrance of the jesuits and Romish priests into the kingdom, though he thought it proper to institute his suit of scandalum magnatum, in the star chamber, against some persons who happened to talk of this. Rapin says, that the truth of the report was proved by a letter under the earl's own hand to cardinal Bellarmine, which the archbishop of Canterbury (George Abbott, who was so opposed to popery that he was called a puritan,) produced on the trial, and that upon this letter the parties accused were discharged, but in the report of the case by *Moore*, (see *Moore's Rep.* 821,) it is said, they were grievously fined. In a little more than a year afterwards the earl died, on the 15th of June, 1614: and, what corroborated the truth of the charges against him, he declared in his last will and testament, that he had always been a Catholic; and would die in that religion. Hypocrisy being most commonly the mother of every vice, it is almost unnecessary to add, that historians have drawn his character in the most odious colours. It is very certain, that he was deeply concerned with his niece in the poisoning of Sir Thomas Overbury, in order to facilitate her marriage with Carr, the king's favourite.

Viewing this man's character, and the situation of the Papists at this period of time, we are unavoidably led to connect his intentions in sending out this colony to Newfoundland, with those of Sir George Calvert, in about eleven years afterwards, whose motives were honestly and openly professed to be, that of forming an asylum for the Catholics. What inducements operated with lord Bacon, Mr. Justice Doddridge, lord chief baron Tanfield, and others of the patentees less known, we are not informed; and are therefore to attribute to them the laudable motive of pursuing the public good, though perhaps blended with the prospect of private emolument. See *Rapin's Hist. of England*, Vol. 8, p. 8, 99, 101, 104, 131. *Hume's Hist.* Vol. 4, p. 247.

NOTE (K) p. 197.

Although the observations of Doctor Russell on indulgences, (in his *History of Modern Europe*, letter 55,) are here acceded to, yet it is not thereby meant to approve of his *hypercriticism* on what Mr. Hume has said on the same subject, in Note (A) to chap. 29, of his *Hist. of England*. Mr. Hume was endeavouring to show, that "the sale of indulgences was no more criminal than another *cheat* of the church of Rome, or of any other church;" which led him to remark, that "after all these indulgences were promulgated, there still remained (besides hell fire,) the punishment by the civil magistrate, the infamy of the world," (which last sanction, a very powerful one, is, by the by, omitted by Doctor Russell in his quotation,) "and secret remorse of conscience *which are the great motives that operate on mankind.*" On which the Doctor has thought it proper to bestow the following extraordinary language: "Now the first of these assertions" (by which the Doctor can mean nothing else than the existence of hell fire,) "is literally *false*; for the very words of an indulgence bore, that it restored the person to whom it was granted to that innocence and purity which he possessed at baptism; and according to the doctrine of the Romish church, the infant is then fit for heaven. But the indulgence did not stop here; it concluded thus: "so that when you die, the gates of punishment shall be shut, and the gates of the paradise of delight shall be opened." Notwithstanding Mr. Hume might have been here guilty of a small oversight, in not attending to the operation of an *indulgence*, in exempting the sinner from *hell-fire*—a circumstance, on which he

appears to lay very little stress, and that too probably, only in compliment to the believers in christianity, relying upon the other "great motives" to morality which he mentions, yet he evidently means here only to check the exuberant declamation of "protestant writers," upon the effects of indulgences. Pronouncing the sale of indulgences to be a "cheat," like other pious frauds committed by other churches as well as the Romish, he cannot fairly be said to be arguing in their favour. It must be acknowledged by those who suffer themselves to reason on such subjects, that the unbounded confidence, which is taught by modern fanatics to be placed in the efficiency of *faith*, in preference to *good works*, in obtaining salvation, has much the same pernicious effect on the *moral* conduct of human society, as the actual grant of indulgences by the supreme pontiff of Rome.

NOTE (L) p. 199.

There is not, perhaps, any sect of the original reformers, which has admitted of a greater number of subdivisions, than that of the Anabaptists. The doctrine of the baptism of adults, being somewhat more consistent with reason, than that of infants, it seems to have been greedily adopted by many of the first reformers. With this principle as a foundation, they frequently connected the most ridiculous and absurd tenets; still retaining, however, the name of Anabaptists. Several of them attempted, in the year 1535, at Amsterdam, to revive the doctrine of the Adamites, a christian sect of the second century, whose principal tenet was to strip themselves naked during their religious ceremonies. These Anabaptists exceeded the Adamites, for they paraded the streets start naked, both men and women. Another schism happened among the Anabaptists, about the same time, at Haerlem, in Holland. It owed its original, to the liberty which a young man there took, of putting his hand into the bosom of a young woman whom he loved, and had a mind to marry. This touch of her breast, came to the knowledge of their church; and thereupon they consulted what punishment the delinquent ought to suffer. Some maintained he ought to be excommunicated; others said, that his fault deserved favour, and would never consent to his excommunication. The dispute grew to such a height, that it caused a total rupture between the two parties. Those who declared for indulgence to the young man, were called *Mamillarians*, from *Mamillæ*, breasts. (See *Bayle's Hist. Dict. Artic. Adamites, Mamillarians, and Picards.*) A more inoffensive party of them, however, was formed about the same time, in Holland, by one of their principal chiefs, whose name was *Mennon*, from whom they took the name of *Mennonites*, and subsist to this day as a distinct sect, both in Europe and America. "Contrary to the murderous and sanguinary principles of the original Anabaptists, they became altogether innocent and pacific. Holding it unlawful to wage war, or to accept of civil offices, they devote themselves entirely to the duties of private citizens; and by their industry and charity, endeavour to make reparation to human society, for the violence committed by their founders. A small number of this sect, which is settled in England, retains its peculiar tenets concerning baptism, but without any dangerous mixture of enthusiasm." (*Robertson's Hist. of Cha. V. book 5th.*) They hold the principle also, of refusing oaths; (*Proud's Hist. of Pennsylv. Vol. 2, p. 342;*) which is probably what is meant by Robertson, in their refusing to accept of civil offices. A very early instance, in regard to them, occurs: about the time of the first revolt of the Dutch provinces from Spain, when only the two provinces of Zealand and Holland had become independent, the magistrates of the city of Middleburg, in Zealand, had prohibited the *Menists*, as they were then called, from carrying on trade, and had caused their shops to be shut up, because they refused to take the usual oaths to the state. The prince of Orange, who still retained his power, as governor of Zealand and Holland,

after an admonitory letter to the magistrates, dated January 26th, 1577, issued express orders to them, not to molest the Menists on account of their refusing the oaths. See these letters and orders in a book published by the Quakers, when they applied to Charles II. of England, for the like liberty, in the year 1675, entitled "The Case of the people called Quakers, relating to oaths." The Menonists emigrated to Pennsylvania, where their principal settlement in America is, as early as the year 1698, some in 1706, 1709, and 1711, but most of them in 1717; when, in a very extraordinary manner as it appears, the Quakers of that province, notwithstanding the similarity of their tenants, expressed great uneasiness at their coming there. See *Proud's Hist. of Pennsylvania*, vol. 2, p. 100. Acts of assembly in Maryland, provide for the indulgence of them in refusing oaths, putting their *affirmation* upon the same footing as that of the Quakers; but it is doubtful whether any of them settled in that state. Lancaster, the place of their principal residence, being in the neighbourhood of Maryland, it is possible that their frequent intercourse in that state, might have occasioned a legislative provision in their favour.

The Anabaptists, properly so called, are numerous in almost every state in the union. They are said to be "chiefly upon the Calvinistic plan as to *doctrines*, and *independents* in regard to church government. *Morse's Geography*, artic. Pennsylvania. If we could place any confidence in an allegation made in a law of Massachusetts against them, in the year 1644, which must have been shortly after their first emigration to America, to wit: that "they denied the lawfulness of magistrates," it would seem, that they had not then relinquished all their dangerous tenets. But this allegation might have been made merely to cover the persecution against them. See the law in *Hazard's Collection*, vol. 1, p. 533.

NOTE (M) p. 202.

The reader, it is hoped, will not be displeased with the insertion here of a description of the execution of Servetus, extracted from a MS. history of him, cited in a note on the same subject in *Roscoe's Pontificate of Leo X.* ch. 19. "Impositus est Servetus trunco ad terram posito, pedibus ad terram pertingentibus, capiti imposita est corona, straminea vel frondea, et ea sulphure conspersa, corpus palo alligatum ferrea catena, collum autem tunc fune crasso quadruplici aut quintuplici laxo; liber femori alligatus; ipse carnificem rogavit, ne se diu torqueret. Interea carnifex ignem in ejus conspectum, et deinde in orbem admovit. Homo, viso igne, ita horrendum exclamavit ut universum populum perterre fecerit. Cum diu langueret, fuerunt ex populo, qui fasciculos confertim conjecerunt. Ipse horrenda voce clamans, *Jesu, Fili Dei Eterni, miserere mei*. Post dimidiæ circiter horæ cruciatum expiravit." On this Roscoe remarks, that Calvin, who was apprehensive that the death of Servetus might entitle him to the rank of a martyr, thought it necessary to defame his memory, by asserting that he had no religion; and inhumanly attributed the natural expression of his feelings, on the approach of his horrible fate, to what he calls a *brutal stupidity*. "Ceterum ne male feriat inebulones, recordi hominis pervicacia quasi martyris glorientur, in ejus morte apparuit belluina stupiditas, unde judicium facere liceat, nihil unquam serio in religionem ipsum egisse. Ex quo mors ei denunciata est, nunc attonito similis hæere, nunc alta suspiria edere, nunc instar lymphatici ejulare, Quod postremum tandem sic invaluit, ut tantum, hispanico more, reboaret, *Misericordia, Misericordia*." *Calvini Opus*, p. 101.—Was not this making a cruel scoff at the sufferings of this unfortunate man? And are we not as much surprised at the opinion expressed on Servetus's execution by a celebrated coteremporary reformer—Melancthon? "Miratus sum esse qui severitatem illam improbant."—But we find the principle of these intolerant sentiments recorded in Calvin's "Christian Institution"—"Si penes singulos jus et arbitrium

erit judicandi nihil unquam certi constitui potérít, quin potius pota vicillabit religio." *Calv. Inst. lib. 4, p. 10. sec. 31.*—But we are told, that the followers of these reformers have left off these things, particularly in America; and that the excellent constitution of the United States gives unbounded freedom in matters of religion.—Vain deception!—The constitution of the United States, it is true, provides, in one of its amendments, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."—It is possible, that instances may occur, where this amendment to the constitution may be of some use; as appears from two recent cases in the late session (in 1810—11,) where the president thought it proper to interpose his *disapprobation* of two bills deemed by him unconstitutional under this clause. But as congress seldom have occasion to legislate on subjects of religion, the oppression of individuals in the enjoyment of their religious as well as civil rights, is most generally to be apprehended from the state governments. In most of the states the penalties of the *common law*, in matters of religion, still subsist. The bloody *statutes* also, of some of them, only *sleep*. Not being repealed they are liable to be called up into action at any moment when either superstition or fanaticism shall perceive a convenient time for it. What Jew, Socinian, or Deist, possessing a sound mind, would venture, in the state of Maryland for instance, to open his lips even in defence of his own religion?—Alas! (as *Roscoe* observes on this subject,) "The human mind, a slave in all ages, has rather changed its master, than freed itself from its servitude."

NOTE (N) p. 208.

In Tindal's edition of Rapin's Hist. of Engl. (vol. 7. p. 528,) it is suggested, that "the severities, which from this time" (to wit, that of making the statute of 35 *Eliz.* ch. 1.) "began to be exercised in England upon the nonconformists, were probably occasioned by the disturbances caused by Hacket and some other enthusiasts." This William Hacket, (according to the account of him given by *Bayle*, in his *Hist. Dict.* art. *Hacket*, which account seems to have been extracted principally from *Camden's Annals*,) was originally a servant to one Mr. Hussey in Northamptonshire. It was a practice with him to attend the sermons of the Puritan ministers, for the purpose of repeating them again to his acquaintance, and though illiterate, yet having a most retentive memory, he would over his cups with his companions, amuse them with a mock recital of their sermons. Being much addicted to drunkenness and debauchery, to support his expenses in that way he turned a highwayman. At last he set up for a prophet, and prophesied famine, pestilence, and war to England, unless it established the consistorial (or Calvinistic) discipline. He began to prophesy at York and Lincon, for which, it seems, he was publicly whipped; probably on a prosecution against him at common law, as an impostor in religion; (for which see 1 *Hawk.* ch. 5, sect. 3.) Having a wonderful fluency in extemporary prayer, he made the people believe, that it proceeded from an extraordinary gift of the Holy Ghost. He pretended to have a very great confidence in these prayers, for he said, that if all England should pray for rain, and he should pray to the contrary, it would not rain. He had the address to persuade two persons of some learning, Edmund Coppinger and Henry Arthington, to join him. Coppinger assumed the title of the *prophet of mercy*, and Arthington that of the *prophet of judgment*. They gave out, that they had an extraordinary mission, and that next to Jesus Christ none upon earth had greater power than William Hacket. They declared that he was the sole monarch of Europe. They would have proceeded to the ceremony of unction, but he would not suffer them, being already anointed, he said, by the Holy Ghost, in heaven. They asked him at last, what he had to command them, and protested that they would pay an obedience without reserve. He ordered them to go

and proclaim through all the streets of London, that Jesus Christ was come to judge the world. They immediately obeyed him. They drew together, by their bawling, such a concourse of people, that being come to Cheapside, they could go no further, nor be heard; but finding an empty cart, they mounted upon it and discoursed of the important mission of William Hacket. They said, that he partook of the nature of glorified bodies, and was to convert all Europe to the consistorial discipline; and that the power of judgment was committed to him. They prophesied, that all who refused to obey this king of all Europe, should kill one another, and that *the queen should be dethroned*.—Having thus, as faithful missionaries, propagated the doctrines of their lord and master, they returned to the inn where he lodged. As soon as Arthington approached his presence, he turned round to the people, who had followed them, and cried out, “Behold the king of the earth!” They were afterwards arrested, prosecuted, and tried for high treason; (it being plainly within the statute of 13 *Eliz.* ch. 1, at that time in force; see 1 *Hale’s Hist. Pl. Cr.* 319.) When they were on their trial, they refused to take their hats off before the judges, saying, *they were above the magistrates*. Hacket also, at the same time, expressed to the judges the most virulent invectives against the queen, and added that his design was to rob her of her crown and life, and *change the whole form of the government*. Hacket was executed in pursuance of his sentence, which was, to be hanged and quartered. Coppington starved himself to death in prison; and Arthington was pardoned. These disturbances in the streets of London occurred, (according to *Bayle*, as before cited,) on the sixteenth of July, 1592, which was about six months prior to the making the statute of 35 *Eliz.* ch. 1.—It must be acknowledged, that these scenes too strongly indicated a renovation in England of the then recent excesses of the Anabaptists at Munster. When religion will thus forcibly mingle itself with the political proceedings of the government, reason pronounces the necessity of applying some curb to it. The happiness of the people, the supreme law, in such case demands it.

NOTE (O) p. 215.

Mr. Holmes, in his *Annals*, (in Note 5, at the end of his first volume,) has expressed considerable dissatisfaction with an *American historian*, for endeavouring to represent, that the Puritans removed from Leyden to America, because they were “obscure and unpersecuted.” He seems to allude to an expression of Mr. Marshall, in his *Life of Washington*, Vol. 1, p. 90, who says, that “their obscure situation at Leyden became irksome to them,” and “without persecution they made no converts.” But it is to be observed, that Marshall has on this occasion, only copied the expressions and observations used by Dr. Robertson in his *History of New England*, who could not be suspected of being an “advocate for the English hierarchy.” Besides, as it is in vain to deny, that the eclat attending the foundation of any religious sect, which shall happen to make a noise in the world, has considerable operation in the minds of the founders, whether they are sincere in their belief or not, there cannot be much impropriety in saying, that the dread of having their schemes to prove abortive, and their names to sink into *obscurity*, would not a little mingle with other considerations, however laudable or virtuous. It is equally in vain also, to deny, that *persecution* has, in many instances, *contributed* much to promote the growth of religious sects. Robertson’s sect being entirely destitute in Holland, of the nourishing dew of persecution, it was not too vague an inference, that through want of this, they made fewer converts than they would otherwise have done. Without some of these means, by which a regular accession to their numbers could be made, it was evident, that old age, natural deaths, and the vexatious defection of their youth, so pathetically complained of, would in time work their annihilation.

Mr. Holmes is displeased also, that "the Puritans of Leyden and of New England are, *to this day*, represented as *Brownists*." But it seems to be certain, however, from all the best historians of those times, that the first person among the Puritans, who set up a separate congregation distinct from the Presbyterian, was Robert Brown. Whether he then introduced the exact church discipline, afterwards established by Robinson, is immaterial. Brown being the first person who appeared in England at this time, among the Puritans, at the head of a visible congregation, of a sect entirely new, would naturally induce persons of other sects to give them a name; which they did, by calling them after their first apparent founder. It ought to be noticed, that it is not always in the power of any sect or religious society of people, to appropriate to themselves a fixed determinate denomination. Other men will fix it for them. Nor is it in their power to alter it, any more than the language generally spoken. This is verified by that of the Quakers, who to this day disclaim that name, it being a term of ridicule; but call themselves "Friends," a term which few people adopt when they speak of them. A book written by Robinson, entitled "A just and necessary apologie of certain christians no less contumeliously than *commonly called Brownists* or Barrowists," is cited by Mr. Holmes, to show what were Robinson's principles; in which Robinson professes that their religion was the same as the Dutch Reformed Church, excepting something relative to the Apocrypha. That might be, and yet not be variant in doctrine from the church founded by Brown. But this citation of the title of Robinson's book is so far unfortunate, as to prove directly, that in the time of Robinson, according to his own acknowledgment, the members of his church were "commonly called Brownists;" and moreover, that the Brownists and these anonymous "certain christians," were, according to the confession of the chief or leader of the latter, one and the same sect; which reduces it to the question, whether it was in their own power, or in that of other men, to alter or continue their former denomination. Analogous to this, is the title of a very learned and well written book, by that great apostle of the Quakers, Robert Barclay: "An Apology for the True Christian Divinity, as the same is held forth, and preached by the people, *called in scorn*, Quakers;" in which he, in the same manner as Robinson, professes to set forth the principles of the Quakers, and expressly mentions, that "it was a name not of their choosing, but reproachfully cast upon them." But it would be ridiculous for any Quaker, who professed to belong to what they call The Society of Friends, to say, that he was no Quaker. In corroboration of what is here said, it may be proper to subjoin a short extract from No. I, of the Appendix to the second vol. of Hutchinson's Hist. of Massachusetts: I shall briefly touch upon their ecclesiastical affairs. I suppose this people were the first who took or received the name of Independents, which in a few years after was the name given to a body of men in England, who assumed the government there. *When they first went to Holland, they were known by the name of Brownists.* Some of the characteristics of Brownism, they afterwards disclaimed, and at the same time disclaimed the name, which was generally odious; the character of the founder of the sect, being at best, problematical. Besides, he renounced his principles, and returned to episcopacy. The Puritans they could not conform to, and therefore considered themselves as a distinct church or by themselves, independent of all other." Who are meant here, "by the Puritans to whom they could not conform," unless they are the English Presbyterians, it is difficult to conceive. However, it shows, that *when they first went to Holland, they were known by the name of Brownists*; but that Brown, by his apostacy, having brought the name into discredit, they began to be ashamed of it. To this may be added, that Sir William Temple, in his excellent "Observations on the United Provinces," which he wrote about the year 1670, mentions the *Brownists* among other sects, "whose names were then

almost worn out in all other parts," as a sect then and there existing by *that name*; which sect must certainly have been, the remains of either Robinson's or Smith's congregation at Amsterdam or Leyden.

Mr. Holmes also represents Robinson as "a man of learning, of piety, and of Catholicism;" and in Hutchinson's Hist. of Massachusetts, vol. 2, Appendix, "he is said to have been a man of *good learning*, and of a *benevolent disposition*:" where is mentioned, (we may suppose by way of confirmation of his character for learning,) that he was persuaded by Polyander, one of the divinity professors in the university of Leyden, to dispute publicly with Episcopius, another divinity professor in the same university, on the religious tenets of the Armenians, a new sect then lately risen in Holland. When we read and reflect upon the troubles and distresses, which befel the persons who professed the Armenian tenets in Holland about this time, persecuted throughout all the provinces more inveterately than the Puritans were in England, whatever "honour and respect" Mr. Robinson might have acquired from his disputation with Episcopius, it certainly was no evidence of his "benevolent disposition." The Gormarists, who were Calvinists, like the established Church in England, would tolerate no dissenters from their principles. The Armenians differed from them only with regard to the unintelligible mysteries of predestination, election, justification, and grace. If Robinson had one spark of a "benevolent disposition," he would not have joined the cry of persecution, in hunting down a sect for such differences of opinion, especially when these Armenians could boast, of having then at their head, such men as the patriotic Barneveldt and the learned Grotius.

NOTE (P) p. 223.

I am well aware, that the Gallican Church, in the latter end of the seventeenth century, made under the auspices of Louis XIV. a noble stand against the encroachments of the papal power. Had the *four articles*, contained in the declaration made by the general assembly of the French clergy, on the 19th of March, 1682, been acknowledged by the pope, and adopted throughout other Catholic countries in Europe, the Roman Catholic church would have been as harmless in its political tenets as any other sect of christians. The first of those articles was, "That kings and princes are not subject to the ecclesiastical power as to their temporals; and that they cannot be deposed, directly or indirectly, by the authority of the keys of the church, nor their subjects absolved from the allegiance and obedience, which they owe them." See *Dupin's Hist. of the Church*, Cent. XVII. ch. 19. But it is well known, that pope Innocent XI. as soon as he was informed of these proceedings of the French bishops, immediately called a consistory at Rome, in which these four articles or propositions, were formally condemned and ordered to be burnt. See the *Mod. Univ. Hist.* vol. 26, p. 479. The Republic of Venice had, indeed, in the beginning of the seventeenth century, made a feeble effort to oppose the power of the pope to interfere in the political affairs of the state, but in the end, were obliged to yield to it. The power of the pope, therefore, in deposing kings, and absolving subjects from their allegiance, was generally acknowledged throughout the greater number of the Catholic states of Europe, until the emperor Napoleon, on the 17th of February, 1810, deprived the Roman pontiff of all temporal power, and obliged him to swear to the observance of the above mentioned four propositions contained in the declaration of the French clergy, in 1682, as before mentioned.

NOTE (Q) p. 227.

The author, in vindication of those observations he makes on the conduct of the Catholics, begs leave to add a quotation from a work, which he has once or twice before cited, and which has been always held in high estimation by the lit-

erati of all Europe. *Bayle*, in his Historical and Critical Dictionary, art. *Elizabeth*, makes the following remarks on *Moreri's* Dictionary, in relation to the same article: "He should not have several times exaggerated the persecutions of the Roman Catholics, without mentioning the acts of rebellion which exposed them to that storm. A faithful historian ought first to have observed their plots against the queen's government, and then the severe punishment she inflicted for those plots. The transposition of these two things, would be great unfaithfulness in a historian. What name then shall be given to *Moreri's* conduct, who suppresses entirely those plots?" In another remark on the same article, he observes, "Elizabeth was forced, by reasons of state, to use severity towards Papists. Some lost their lives; a great number of others, either suffered the rigours of imprisonment or inconveniences of exile. The Protestants of England confess this; they do not deny the fact; but they maintain, that the wicked attempts of the Papists against the government, and against the queen, deserved such a punishment. You will be sure not to find this observation in the libels of the English Roman Catholic. You will indeed find the punishments, with all the rhetorical flourishes that can amplify them, but not a word of the seditious enterprises which preceded, and were the cause of them. There are few relations, in which the order of events is not confounded. This confusion is not always produced by fraud; a too turbulent zeal, is sometimes the cause of it. An ill conducted zeal, fixes the mind upon the hardships of persecuted virtue, and causes the provocation of the persecutors to be forgotten. If these two causes are not sufficient, dishonesty, which alone would disorder the events, completes the confusion. However it be, I have observed, that the principal difference between the accounts of Catholics and Protestants, consists in the order of the facts: each party endeavours to give the first place to the injuries they have endured; they make a long detail of these, and pass over slightly what they have done, by way of reprisals, or what they have suffered as a just punishment." These remarks of *Mr. Bayle*, may be presumed to have been made with the utmost impartiality. He was by birth a Frenchman, a son of a Huguenot minister in the south of France. For his fine talents and learning, he was made professor of moral philosophy and history, in the Protestant college of Sedan. But that college being suppressed by Louis XIV. about the time of his revocation of the edict of Nantes, and *Mr. Bayle* being offered a like professorship in the college of Rotterdam, in Holland, he became a resident of that place, and there passed the remainder of his life. Although he always professed himself a member of the reformed French church, (except during a temporary conversion to the Catholic church, at an early period of his life,) yet his writings gave his enemies some apparent grounds to accuse him of Deism, and some indeed of Atheism. He was certainly, what was called in England about this time, a *Free-thinker*; and his writings, particularly his Dictionary, abound with severe sarcasms on the superstition and fanaticism of the age in which he lived. For this reason, his character was assailed by the bigots and fanatics, both of the Catholics and the Calvinists; but for the same reason also, his opinions, like those of *Mr. Hume*, are to be respected as of the most impartial authority, in all historical controversies between these two sects of religion.

THE END.

INDEX.

- Aborigines, of America, historical account of, and dissertation on their different tribes and their connections, 160.
- Acadie, authority given to the Sieur de Monts to colonize, and a grant made to him of its exclusive commerce, 86.
- Accomack, Captain Smith while exploring the Chesapeake Bay, is directed to, by some savages, his treatment by the natives, 106.
- Aguascosack, an Indian town burnt by Sir Richard Grenville, 60.
- Albany, Henry Hudson sails up the river which bears his name, as far as the present site of Albany, 88.
- Albemarle Sound, explored by Governor Lane, 61.
- Alexander VI. Pope, 14; the disputes between the courts of Spain and Portugal referred to, *ib*; his partition of all discoveries which had been or might be made, *ib*; his character, by Guicciardini, *ib*.
- America, North, discovery of, by Christopher Columbus, 9; by John Cabot, 11; Sir Humphry Gilbert obtains from queen Elizabeth, letters patent, in order to settle some part of, 43; their renewal to Sir Walter Raleigh, 54; the progress of the French in settling colonies in, 83; a new association formed in England for the purpose of colonizing, 91; division of, by James 1st between the North and South Virginia companies, 92; historical account of the aborigines of, and dissertation on the different tribes and their connections, 160.
- Amidas, Captain Philip, is sent out to Virginia by Sir Walter Raleigh, in command of a ship, 55; his return to England in company with Capt. Arthur Barlow, 58.
- Annapolis Royal, discovered by Pontreincourt, 87; the Sieur de Monts removes his colony from L'isle de St. Croix, to, 88.
- Apamatica, chief of the inhabitants of Kecoughtan, 101.
- Aranda, Count de, proposals made to him in conjunction with other noblemen by Stephen Gomez, 30; they furnish Gomez with a ship to prosecute his discoveries, *ib*.
- Argall, Captain Samuel, is sent out by Sir Thomas Dale, governor of Virginia, with an armed force to break up the French and Dutch settlements in America, 191; his success, *ib*.
- Aquohanock, an Indian town visited by Mr. John Pory, 148.
- Aroeck, an Indian nation visited by Capt. Smith while exploring the Chesapeake Bay, 112.
- Assacomoco, an Indian town visited by Mr. John Pory, 157; intended treachery of the Indians there, *ib*.
- Assumption island, in the river St. Lawrence, named by Cartier, 35.
- Attaughcomoco, an Indian town visited by Mr. John Pory, 149.
- Aubert, Thomas, makes a voyage from Dieppe to Newfoundland, 17; sails up the

- river St. Lawrence as far as Canada, *ib*; on his return carries with him to France two of the natives, *ib*.
- Avalon, province of, Sir George Calvert obtains from James 1st a grant of the province of Avalon in Newfoundland, 239; date of the grant, 240; he sends out a small colony, 241; visits his colony in person, *ib*; his views and intentions in founding the colony at Avalon, 242.
- Baltimore, baron of, Sir George Calvert created baron of Baltimore by Charles 1st, 248; his son Cecilius Calvert succeeds to the title on his father's death, 271.
- Barlow, captain Arthur, is sent out to America by Sir Walter Raleigh, in command of a ship, 55; makes an excursion into the river Occam, 57; account of his discoveries, *ib*; his return to England, 58.
- Bermudas, the English become acquainted with the beauty and fertility of the, 190; they are included in the third charter of Virginia, granted by James 1st to several individuals of London and Bristol, *ib*; are sold by them to a company who send out a colony to settle there, 191.
- Bertellier, Philibert, is excommunicated and sentenced by Calvin, 201; his sentence, *ib*.
- Boccolod, John, one of the reformers, his doctrines, 198.
- Boleyn, Anna, Henry VIII. obtains a divorce from Catharine of Arragon for the purpose of marrying, 202; her marriage to Henry VIII. *ib*.
- Bolus river, discovered by Capt. Smith in his first voyage of discovery in the Chesapeake Bay, 116; supposed to be the Patasco, *ib*.
- Bonavista cape, Cartier touches at, in his first voyage to America, 34.
- Brown, Robert, forms a sect of Puritans who name themselves Brownists, 207; their doctrines, *ib*; number of his followers, 209; leaves his sect and returns to the church of England, 213.
- Brownists, a sect of Puritans formed by Robert Brown, 207; their doctrines, *ib*; their numbers, 209; they are deserted by Brown who returns to the established church, 213; they divide into two bodies under the care of Mr. John Smith and Mr. John Robinson, *ib*; Robinson and his flock remove to Amsterdam, *ib*; remove from thence to Leyden, 214; their sufferings in Holland, *ib*; they determine to emigrate to Virginia, and send delegates to England to negotiate with the Virginia company, 215; their ill success, 216; they again send delegates to negotiate with the Virginia company and obtain from them a patent, 218; part of them set sail for America, *ib*; their arrival off the coast of America, 219; they land at Plymouth called by the Indians Patuxet and settle there, 221.
- Butts, Mr. Thomas, a young gentleman joins the expedition of Mr. Hore to colonize Newfoundland, 36.
- Cabot, John, a native of Venice, offers his services to Henry VII. to make further discoveries in America, 10; obtains from him a commission to himself and his three sons, *ib*; tenor of the commission, 11; causes of their delay in availing themselves of it, *ib*; their discoveries before the receipt of their commission, *ib*; subsequent license granted to him by Henry, 12; his death, 13.
- Cabot, Sebastian, applies to Henry VII. and obtains a ship for the purpose of discovery, at the royal expense, 12; others fitted out for him by some merchants of Bristol, *ib*; his route, *ib*; discovers Newfoundland—St. Johns, *ib*; reaches the continent of North America and sails along it to the 38th degree of latitude, *ib*; his provisions fail and a mutiny breaks out among his crew, *ib*; his return to England, *ib*; probability of his having first seen and discovered that part of Maryland which borders on the ocean, 13; pension granted to him by Edward VI., 39.
- Calvert, Sir George, short sketch of his life, 232; is created one of the principal

- secretaries of state under James 1st, 233; obtains a seat in parliament, *ib*; his political principles as expressed in a debate in parliament on the Newfoundland fisheries, 239; obtains from James 1st a grant of the province of Avalon, in Newfoundland, 239; date of the grant, *ib*; determines to execute the purposes and intents of his grant, 241; sends out a small colony under the command of Edward Wynne, *ib*; visits his colony in person, *ib*; his views and intentions in founding the colonies of Avalon and Maryland, 242; further expression of his political principles in parliament, 243; his religious tenets, 246; from his zeal in promoting the marriage of prince Charles with the infanta of Spain, is supposed to have been bribed by the Spanish minister, *ib*; is elected one of the provisional council for the government of Virginia, 247; determines to leave England and retire to America, 248; is created *baron of Baltimore*, *ib*; resides for some years at his colony at Avalon, 254; visits the Virginia colony, near the Chesapeake Bay, *ib*; his ungracious reception by the Virginians, and its causes, *ib*; oaths of supremacy and allegiance tendered to him by the assembly and his refusal to take them, 255; forms the scheme of settling a colony in Maryland, 258; is opposed by the Virginia colonists, 262; returns to England and relinquishes his intention of settling in Newfoundland, 269; exerts his influence to obtain a grant of territory on the Chesapeake Bay, 270; obtains a promise of a grant but dies before the execution of it, 271; his title descends to his eldest son Cecilus, who obtains the grant promised to his father, *ib*.
- Calvert, Cecilus, eldest son of Sir George Calvert and baron of Baltimore obtains the grant which had been promised to his father, 271.
- Calvin, John, his character, 199; fixes his abode at Geneva, 200; his excesses there, *ib*.
- Canada, derivation of the name of, 34; first attempt of the French to colonize, *ib*; James Cartier sent out with three large ships and a number of colonists, to plant a colony, *ib*; his arrival in the St. Lawrence, *ib*; sails up the river Saguinay, 35; goes further up the St. Lawrence and has an interview with an Indian chief named Donacona, who informs him of a large town called Hochelaga, *ib*; his treatment by the inhabitants of Hochelaga, *ib*; his colonists attacked by the scurvy, *ib*; prepares to return to Europe, *ib*; kidnaps Donacona and carries him to France, *ib*.
- Cape Breton, arrival of the expedition under the care of Mr. Hore, at Cape Breton, 36.
- Cape Charles, one of the capes at the entrance of the Chesapeake bay named by Capt. Christopher Newport, in honor of the duke of York, 100.
- Cartier, James, a pilot of St. Malo is prevailed upon by admiral Chabot to undertake an expedition to America, 34; sails from St. Malo under a commission from the king of France, *ib*; arrives at cape Bonavista, Newfoundland, *ib*; proceeds to the gulf of St. Lawrence, and lands at several places for the purpose of taking possession, *ib*; returns home, *ib*; is again persuaded to undertake a voyage to America, by Francis de la Roque, lord of Roberval, who obtains for him a royal commission of captain general, 37; lands at Newfoundland, 38; proceeds to Canada, where he builds a fort and commences the first settlement which he calls Charlebourg, *ib*; waits for more than a year for the arrival of Roberval, *ib*; sets sail for France, *ib*; meets Roberval at Newfoundland, eludes him in the night and returns to Bretagne, *ib*.
- Carver, John, delegated by the Brownists in Leyden to negotiate with the Virginia company for a grant of territory in America, 215; embarks with the Brownists for America, 218; reaches cape Cod, 219; lands at Plymouth, 227; is chosen governor, 220.
- Catharine of Arragon, 202; Henry VIII. forms the resolution of being divorced from, *ib*; causes his own clergy to try the validity of his marriage with Catharine and to annul it, *ib*.

- Catholic Church, Roman, struggle between the, and the church of England, 194; act passed in the province of Maryland against those professing the doctrines of the, 195.
- Catholics, Roman, causes of the severe statutes enacted against them in England, 222 to 232; their conduct on the accession of James 1st, 227; their excesses together with those of the Puritans give rise to two political parties, 230.
- Cavendish, Sir Thomas, accompanies Sir Richard Grenville in his first voyage to America, 59.
- Cecil, Sir Robert, one of the principal secretaries of state under Elizabeth, 232; is continued in his office by James 1st, *ib*; Sir George Calvert becomes one of his under secretaries, *ib*.
- Cecowance, an Indian town visited by captain Smith in his first exploring expedition in the Chesapeake bay, 118; its location, 119.
- Challons, Henry, is sent out by the Plymouth company to make discoveries on the coast of Virginia, 97; his vessel is captured by the Spaniards, carried to Spain and there confiscated, *ib*.
- Champlain, Samuel, the founder of Quebec, accompanies Pontgrave to Tadoussac, 85; returns with him to France, *ib*; accompanies the Sieur de Monts to Canada, 87; discovers St. Johns river, called by the natives Ouygondy, 88; discovers L'isle de St. Croix, and winters there in company with the Sieur de Monts, *ib*; is left in Canada by the Sieur de Monts, for the purpose of exploring the country, 89; takes charge of the colony sent out by De Monts in 1608, and lays the foundation of the present city of Quebec, 90.
- Charlebourg, the first settlement in Canada, built by James Cartier in 1540, 38.
- Chatte, Monsieur de, succeeds Mons. de Chauvin as governor of Canada, 85; his schemes, *ib*; fits out a squadron and gives the command of it to Pontgrave, *ib*; the results of this voyage, *ib*; his death, 86.
- Chauvin, Monsieur de, obtains from the king of France a renewal of the patent of the Marquis de la Roche, 85; makes a voyage to Tadoussac, *ib*; makes a second voyage to Tadoussac, and sails up the St. Lawrence as far as Trois Rivières, *ib*; his death, *ib*.
- Charles V., proposals made to him by Stephen Gomez, and his rejection of them, 30; his grant to Pamphilo Narvez, 32; confers on Ferdinand de Soto the title of Marquis of Florida, with authority to conquer that country, 33.
- Chesapeake bay, discovered by governor Lane, 61; Indian signification of its name, *ib*; Capt. John White ordered to erect a fort on, 68; capt. Bartholomew Gilbert arrives at the mouth of, 80; lands with part of his crew and is killed by the natives, *ib*; return of the remainder of his crew to England, *ib*.
- Chesapeakes, an Indian nation situated on Elizabeth river, 61; visited by governor Lane, *ib*.
- Chetodel, sails from France as pilot to the Marquis de la Roche, 84; is ordered by Henry IV. to search for and bring back the colony left by him on the isle of Sables, *ib*.
- Chowan River, explored by governor Lane, 16.
- Chowanocks, an Indian nation situated on the Chowan river visited by governor Lane, 61; their king friendly to the English, 64.
- Christina creek, a colony of Swedes build a fort and make a settlement on, where the town of Wilmington now stands, 260.
- Church of England, struggle between the Roman Catholic church and the, 194.
- Claudian island, discovered and named by Verazzini in his second voyage, 26.
- Clayborne, William, 263; is said to have made settlements in Maryland prior to the grant made to lord Baltimore, *ib*; is named one of the provincial council of Virginia, in the commission issued by James 1st, to Sir Francis Wyatt and others, 264; is continued in the council and also appointed secretary to the

- colony, by Charles 1st, *ib*; is again appointed secretary, *ib*; avails himself of the opportunities afforded him by his situation, to enter into a traffic with the natives on the borders of the Chesapeake bay, 265; obtains from the secretary of state a special license to trade in America, 266; tenor of the license, *ib*; obtains from the governor of Virginia a special license to trade with the Dutch, 267; objects and intentions of these licenses, 268.
- Columbus, Christopher, his discoveries, 9; their effect on the English nation, *ib*; his object in his first voyage, 10.
- Colony, South or First Virginia, *see* *South Va. colony*.
- Columbus, Bartholomew, makes application to Henry VII. of England, in favor of his brother Christopher, 10.
- Cortereal, Caspar de, sails from Lisbon with two vessels fitted out at his own cost, 15; arrives at Newfoundland, *ib*; proceeds to the mouth of the St. Lawrence, and discovers the coast of Labrador, 16; his return, *ib*; he again sails for Labrador, *ib*; his supposed loss, *ib*; his brother sets out to search for him and is also lost, *ib*.
- Criminals, the crews of Columbus and other early navigators partly composed of, 38.
- Croatoan, an island near Wokoken, 69; is visited by a part of governor White's colony, 70.
- Cranmer, Archbishop of Canterbury, 204.
- Cuskarawaock, river, discovered by capt. Smith while exploring the Chesapeake bay, 110; its location, supposed to be the Nanticoke river, *ib*; further confirmation of the supposition of its being the Nanticoke, 114; additional confirmation, 121.
- Cuskarawaocks, an Indian nation visited by capt. Smith while exploring the Chesapeake bay, 111; their treatment of him, *ib*; their location, *ib*; supposed to be the Nanticoke tribe, 112; confirmation of the supposition, 114; further confirmation, 121.
- Cushman, Robert, delegated by the Brownists in Leyden to negotiate with the Virginia company for a grant of territory in America, 215; his description of the dissensions in the Virginia company, 217.
- Dale, Sir Thomas, sent an armed force to break up the French and Dutch settlements in America, 191; his success, 191.
- Dare, Virginia, daughter of Ananias Dare, the first child born among the colonists in Virginia, 71.
- De la Roche, Marquis, receives from Henry IV. a commission to conquer Canada, and other countries, 84; sails from France, arrives on the coast of America and leaves a colony of malefactors on the isle of Sables, *ib*; returns to France, *ib*; his death, *ib*; sufferings of the colony left by him on the isle of Sables, *ib*; return of part of them to France, 58.
- De la Roque, Francis, lord of Roberval undertakes to effect a settlement in Canada, 37; is created viceroy and lieutenant general in Canada, &c. by Francis 1st, *ib*; prevails upon Cartier to undertake a voyage to Canada, *ib*; sends Cartier before him with five ships to plant a colony, *ib*; obtains for Cartier, a royal commission of captain general, *ib*; sails for America and on arriving at Newfoundland meets Cartier returning to France, 38; Cartier eludes him in the night and returns to France, *ib*; proceeds up the St. Lawrence, *ib*; builds a fort and remains during the winter, *ib*; returns to France, *ib*; again embarks from France for the St. Lawrence, *ib*; is lost, *ib*.
- Denys, Jean, sails from Harfleur to Newfoundland, 17; upon his return publishes a map of the gulf of St. Lawrence and of the adjacent coast, *ib*.
- Donocona, an Indian chief who informs Cartier of the Indian town Hochelaga, on the St. Lawrence, 35; is kidnapped and carried to France by Cartier, *ib*.

- Drake, Sir Francis, his naval exploits approved by queen Elizabeth, 41; visits governor Lane's colony at Roanoke, 65; proposals made to the colonists, 66; carries them with him to England, *ib.*
- Dutch, attempt a settlement at New York, 185; the Dutch East India company send out Henry Hudson to search for a nearer passage to the East Indies, 186; his course, 187; arrives at Newfoundland, *ib.*; leaves Newfoundland and sails along the coast, *ib.*; anchors at Sandy Hook, 188; sails up the Hudson as far as the present site of Albany, *ib.*; returns to Europe, *ib.*; importance of the voyage made by him, *ib.*; they build a fort and make a settlement on Manhattan island, 181.
- Eastern Shore of Maryland, no settlements made on the, until after the year 1660, 115; is visited by Mr. John Pory for the purpose of exploring it, 148.
- Edward VI., legislative enactments first made, during his reign for the purpose of protecting the Newfoundland fisheries, 39; pension granted by him to Sebastian Cabot, *ib.*; his accession to the throne of England at the age of nine years, 203; Edward Seymour duke of Somerset appointed his guardian who instils into his mind the principles of the reformation, *ib.*; establishes a hierarchy in England similar to those of the other European States, 204; establishes the reformation in England, *ib.*; his death, *ib.*
- Elizabeth, queen of England, reign of, favourable to the growth of the maritime power of England, 41; causes of this, *ib.*; she fosters a maritime spirit, *ib.*; manifests her approbation of the naval exploits of captain Hawkins, Sir Francis Drake and other great mariners, *ib.*; Sir Humphrey Gilbert applies to her for permission to carry his schemes into effect, 43; she grants him letters patent, *ib.*; monopolies, a subject of complaint during her reign, 54; she grants a patent to Sir Walter Raleigh, *ib.*; she adopts the reformed religion, 205; reintroduces it into England, 206; her proceedings, *ib.*; she persecutes the Puritans and Roman Catholics, 203; enactments against them, *ib.*
- Elizabeth island, discovered by capt. Bartholomew Gosnold who attempts a settlement on it but relinquishes the design, 76.
- England, New, coast of, explored by capt. John Smith, who makes a map of it, 193; named by prince Charles (afterwards Charles 1st,) *ib.*
- England, Church of, struggle between the Roman Catholic Church and the church of England, 194.
- English, inferior to the other nations of Europe in the science of navigation, 10; causes of this inferiority, *ib.*
- First Virginia Colony, *See South Virginia Colony.*
- Fisheries, Newfoundland, first debate on the, in Parliament, 235; a bill introduced into parliament for the purpose of protecting the, is rejected, 239; debate on the, in parliament, 243; a second bill for the same purpose fails, 245; the importance of protecting the fisheries, again brought before parliament, and a bill for their protection passed by the commons, but lost in the house of lords, 249; again brought before parliament with the same ill success, 250; modification of the royal grants in relation to the, *ib.*; clauses relating to the fisheries, inserted in the several charters subsequently granted, 251.
- Florida, discovered by Ponce de Leon, 18; origin of the name of, *ib.*; the Spanish send an expedition to Florida to kidnap the natives to labour in the mines of St. Domingo, 19.
- Francis 1st, king of France, resolves to participate in the glory of making discoveries, 20; fits out John Verazzini to prosecute discoveries "in the northern parts of America," *ib.*
- French, voyages and discoveries of the, 17; their pretensions to a more early discovery of America than that made by Cabot, *ib.*; progress of, in settling colonies in North America, 83.

- Garcilasso de la Vega, Inca, one of the historians of the expedition of Ferdinand de Soto to conquer Florida, 33.
- Gates, Sir Thomas, joins an association for the purpose of colonizing America, 93.
- Gilbert, Sir Humphrey, a native of Devonshire, distinguishes himself by his military services in France, Ireland and Holland, 42; publishes a discourse on the probability of a north west passage to the Indies, *ib*; applies to queen Elizabeth for permission to carry his schemes into effect, 43; obtains from her letters patent, *ib*; his charter, *ib*; forms a company to carry his designs into execution, 45; puts to sea, accompanied by Sir Walter Raleigh, 47; loses one of his ships, *ib*; result of his voyage, *ib*; sells his estate to furnish means to fit out another expedition, *ib*; is enabled to fit out another expedition of five vessels with which he sails from Plymouth, 48; loses one of his largest ships, *ib*; their route and arrival off the coast of America, *ib*; levies a tax of provisions on each vessel which he finds at Newfoundland, *ib*; lands and takes formal possession of Newfoundland, 49; makes laws for the government of the territory, *ib*; explores the island, after which he proceeds southward, 50; loses another of his ships and determines to return to England, *ib*; is lost, together with one of his remaining vessels, *ib*.
- Gilbert, captain Bartholomew, is sent out to America on a voyage of discovery by some merchants of London, 80; sails from Plymouth and arrives at the mouth of the Chesapeake bay, *ib*; lands with part of his crew and is killed by the natives *ib*; return of the remainder of his crew to England, *ib*.
- Gilbert, Raleigh, joins an association formed for the purpose of colonizing America, 93.
- Gomez, Stephen, accompanies Magellan in the voyage in which he discovered the straits which bear his name, 30; deserts Magellan and returns to Spain, *ib*; proposes to Charles V. the discovery of a more direct passage to the south seas than that discovered by Magellan, *ib*; his proposals meet with an unfavorable reception from that monarch, *ib*; makes the same proposals to the count de Aranda and some other noblemen, who agree to furnish him with a ship, *ib*; he sails to Cuba and from thence on his voyage of discovery, *ib*; coasts along the continent as far as cape Ras, Newfoundland, *ib*; his return to Corunna, *ib*.
- Gorges, Sir Ferdinando, governor of Plymouth, one of the patentees named in the grant to the Plymouth company, 97; petitions the king for a new grant, 235; tenor of the grant, and the use made of it by the company, 236.
- Gosnold, captain Bartholomew, sails from Falmouth in a small vessel fitted out by the Virginia company, to plant a colony in Virginia, 75; his course and arrival on the coast of Massachusetts, *ib*; his discoveries, *ib*; determines to settle on Elizabeth island, but subsequently relinquishes the design, *ib*; his return to England, 76; good effects of this voyage, 77; goes again to America with captain Christopher Newport, 99; is named one of the council of Virginia by James 1st, 100.
- Granganemeo, brother to Wingina king of Wokoken, 56; his residence, 57; invites capt. Amidas and Barlow to visit him, *ib*; kindness of his wife to the English, *ib*; visits Sir Richard Grenville at Hatteras, 60; his death, 63.
- Grenville, Sir Richard, is entrusted by Sir Walter Raleigh with the command of his second expedition, 59; sails from Plymouth with seven small ships and accompanied by Sir Thomas Cavendish, *ib*; takes the southern route by the West India islands, and is induced by a desire of plunder to cruise among them in search of Spanish vessels, *ib*; arrives off the coast of North America, 60; loses one of his ships while going into the harbour of Wokoken, *ib*; his course and discoveries, *ib*; burns the Indian town of Aguascosack, *ib*; sails to Hatteras, and is visited by Granganemeo, *ib*; goes to Roanoke and there plants a colo-

- ny, *ib*; returns to England and arrives at Plymouth, *ib*; arrives at Roanoke from England with a squadron of three ships, shortly after the departure of the first colony left by him, 67; leaves another colony on the island and returns to England, *ib*.
- Guy, John, goes to Newfoundland to plant a colony, 190; is unsuccessful and returns to England, *ib*.
- Gunpowder plot, 228.
- Hackluyt, Rev. Richard, projects a scheme of sending out a fleet to North America for the purpose of discovery, 77; prevails on several merchants of Bristol to join him in the undertaking, *ib*; they make application to Sir Walter Raleigh for his license, 78; their voyage and discoveries, 79; joins an association for the purpose of colonizing America, 93.
- Hanham, Thomas, joins an association for the purpose of colonizing America, 93; is one of the patentees named in the grant to the Plymouth company, 97; sails for America in a vessel fitted out at the expense of lord chief justice Popham, *ib*.
- Hawkins, captain, 41; his naval exploits approved by queen Elizabeth, *ib*.
- Henry IV. of France, restores religious liberty of conscience in his dominions, 83; issues the "edict of Nantz," *ib*; grants to the marquis de la Roche a commission to conquer Canada and other countries, 84; orders Chetodel to search for and bring back the remains of the colony left by the marquis de la Roche, on the isle of Sables, *ib*.
- Henry VII. of England, favourable to the undertaking of Christopher Columbus, 10; his grant to Cabot and his sons, *ib*; grants further patents to some merchants of Bristol, in conjunction with some Portuguese gentlemen, 16; these patents productive of no beneficial effect, 17; probable cause of the failure of their schemes, *ib*.
- Henry VIII. of England, is induced by the representations of Mr. Robert Thorne to fit out ships for the purpose of searching for a north west passage to the East Indies, 31; the result of their voyage, *ib*; encourages Mr. Hore in his undertaking to colonize Newfoundland, 36; remunerates, at his own expense, some French merchants for a ship which was seized and carried off from Newfoundland, by Mr. Hore's colony, 37; becomes a strenuous opponent of the reformation, 202; causes himself to be divorced from Catharine of Arragon and marries Anna Boleyn, *ib*; connives at the introduction of the reformation into England, 203.
- Henry, cape, named by captain Christopher Newport, 100.
- Heriot, Thomas, a celebrated mathematician, goes to America with Sir Richard Grenville and remains after his departure, 61.
- Hochelaga, an Indian town on the St. Lawrence, 35; Cartier informed of, by Donocona, *ib*; supposed to have been inhabited by the Hurons, *ib*.
- Hore, Mr., a merchant of London, resolves to undertake a voyage to, and settlement of Newfoundland, 36; receives the encouragement of the crown, *ib*; is joined by many young gentlemen of good families, *ib*; embarks with his colony in two ships from Gravesend, and arrives at cape Breton, *ib*; sails round Newfoundland to Penguin island, and disembarks on the east side of Newfoundland, *ib*; their sufferings, *ib*; their provisions become exhausted, *ib*; their further sufferings, *ib*; they seize on a French ship and sail for England, 37.
- Hudson, Henry, is sent out by the Dutch East India company to search for a nearer passage to the East Indies, 186; his course and arrival at Newfoundland, 187; leaves Newfoundland and sails along the coast, *ib*; anchors at Sandy Hook, 188; sails up the Hudson as far as the present site of Albany, *ib*; leaves a colony and returns to Europe, *ib*; importance of the voyage made by him, *ib*.

- Hudson river, supposed to have been discovered by captain George Weymouth, 82; its discovery by Henry Hudson, who sails up it as far as the present site of Albany, 187.
- Hunt, Rev. Mr., chaplain to the fleet under the command of captain Christopher Newport, allays the dissensions in the fleet, 99.
- Hurons, supposed to have inhabited the Indian town of Hochelaga on the St. Lawrence, 35; their good treatment of Cartier and his colony, *ib*.
- Isle aux Coudriers } islands in the St. Lawrence discovered and named by Car-
Isle of Bacchus } tier in his first voyage, 35.
- James 1st., king of England, his pacific disposition, 81; on his accession to the throne recalls the letters of marque granted by Elizabeth against the Spaniards, *ib*; concludes a treaty of peace with Spain, *ib*; his division of America between two companies, the north and south Virginia companies, 92; the letters patent granted by him to the two companies, *ib*; establishes a council of Virginia, 94; nature of the council, 95; his instructions sent to the American colonies, 98; the instructions sent by him to America, by capt. Christopher Newport, 100; makes a grant to several individuals under the title of the Treasurer and Company of adventurers and planters of the city of London and Bristol, 190; their unsuccessful attempt to plant a colony at Newfoundland, *ib*; persecution of the Puritans during the reign of, 200; on his accession to the throne determines to put in force the laws which had been enacted against the Roman Catholics, 228; endeavours to effect a marriage between his son and a princess of the royal family of Spain, 229; is urged by his subjects to enact more severe laws against the Roman Catholics, 230; the rise of two parties during his reign, *ib*; his conduct towards the Roman Catholics, 231; is compelled to enact severe laws against them, *ib*; accedes to the petition of the Plymouth company and grants letters patent to the duke of Lenox, 236; tenor of the grant, *ib*; the use made of them by the company, *ib*; makes a grant of the province of Avalon in Newfoundland, to Sir George Calvert, 240; debate in parliament on the grant made by James to the duke of Lenox, 243; commission issued by him to Sir Francis Wyatt and others, 263.
- James river, attracts the attention of captain Christopher Newport's colony, 100; they sail up it, 101; they make a settlement on its banks which they name James town, 102.
- James town, settled by the colony under captain Newport, 102; sufferings of the colonists there, 103.
- Kecoughtan, an Indian town situated on the James river, where Hampton now stands, discovered by captain Newport, 101; captain Newport is invited on shore by the natives of, *ib*; their treatment of him, *ib*.
- Kent island, settlement said to have been made on, before the grant made to lord Baltimore, 115.
- Lake, Sir Thomas, one of the principal secretaries of state, in whose place Sir George Calvert was appointed, 233.
- Lane, Mr. Ralph, appointed governor of the colony left on Roanoke island, by Sir Richard Grenville, 61; makes preparations for exploring the adjacent country, *ib*; his discoveries, *ib*; is deluded by the natives into a search for a copper mine, 62; finds the natives unfriendly to him, *ib*; his return to Roanoke, 63; distress of the colony under his charge, 65; is visited by Sir Francis Drake, *ib*; proposals made to him and his colony by Sir Francis Drake, 66; determines to return to England, *ib*; his arrival at Portsmouth, *ib*.
- Lenox, duke of, grant made to, by James 1st, 236; tenor of the grant, *ib*; use made of it, 26; debate on the grant in parliament, 243.
- Leo X., pope, exhausts the revenues of the church of Rome, and to refill them issues indulgences for sale throughout Europe, 196; effect of this measure, *ib*.

- Luther, Martin, lends his assistance to Stulpitz in his attack upon the doctrine of indulgences, 197.
- Mandeville, Henry Viscount, 247.
- Manteo, a native of Roanoke who went to England with captains Amidas and Barlow, 58; returns to Virginia with Sir Richard Grenville, 59; visits the colony under governor White, 68; is baptised in the christian faith, 71; is created lord of Dessamenpeake by governor White, *ib*.
- Manhattan island, the Dutch build a fort on the south end of the island, where New York now stands, and keep possession under a grant from the states-general, 191.
- Martha's Vineyard, discovered by Verazzini, and by him named Claudians' island, 26.
- Mary, queen of England, persists in adhering to the Roman Catholic religion, 207; her character, 204; her cruelties and death, 205.
- Massachusetts, Captain Bartholomew Gosnold arrives off the coast of Massachusetts, 75; determines to make a settlement on Elizabeth island, but relinquishes the design and returns to England, 76.
- Massawomecks, an Indian nation, of whom captain Smith goes in search, during his first exploring expedition in the Chesapeake bay, 112; supposed to be the same nation subsequently known by the name of the Five Nations, 113.
- Matthias, John, one of the early reformers, aided by his followers, takes possession of the city of Munster in Westphalia, 198; is killed in a sally by the bishop of Munster's troops, *ib*.
- Monts, Sieur de, succeeds Monsieur de Chatte in his commission, 86; objects embraced in his commission, *ib*; forms a company under his patent, and obtains further privileges, *ib*; fits out four ships and sails with them from Havre de Grace, 87; arrives at Nova Scotia, *ib*; his route and discoveries, *ib*; determines to winter at L'Isle de St. Croix, 88; sufferings of his colony, *ib*; removes to Port Royal, *ib*; determines to seek for a more suitable location for his colony, 89; sets out to seek for a more suitable place, his route and return to St. Croix, *ib*; returns to France, *ib*; his patent revoked by the king, *ib*; enters into new engagements with Pontreincourt, *ib*; his former grants returned to him, 90; sends out three ships to Canada and establishes the first permanent colony on the banks of the river St. Lawrence, *ib*.
- Monopolies, a subject of complaint during the reign of Elizabeth, 54.
- Moyaonnees, an Indian town visited by captain Smith on his first exploring expedition in the Chesapeake bay, 119; its supposed location, *ib*.
- Nacochtant, an Indian town on the Chesapeake bay, 119.
- Nantaughtacunds, the Indian nation by whom captain Smith was made prisoner, 123; their location, *ib*.
- Nantiquacks, an Indian nation situated on the Chesapeake bay, 112; their supposed location, *ib*.
- Nanticokes, legislative enactments of the Legislature of Maryland in favour of, 175.
- Narvez, Pamphilo, obtains from the emperor Charles V. a grant of "all the lands from the River of Palms to the Cape of Florida," 32; fits out a powerful armament and sails for America, *ib*; lands on the western coast of Florida, *ib*; unsuccessful result of his expedition, *ib*.
- Naunton, Sir Robert, one of the principal secretaries of state under King James I., 216.
- Nawse, an Indian nation situated on the Chesapeake bay, 112.
- Newport Harbour, supposed discovery of, by Verazzini, 27; his description of it, *ib*.
- Newport, Captain Christopher, is sent out to America by the South Virginia

- company in command of a squadron, 99; is named one of the council of Virginia by James 1st, 100; sails for England, 103; returns to James town in command of two ships, 104; again returns to England, 106; his arrival at James town with more colonists, and bearing instructions for the government of the colony framed by king James I., 181; tenor of these instructions, 182.
- Newfoundland, is discovered by Sebastian Cabot, 12; arrival of Gaspar de Cortereal at, 15; the navigators from Biscay, Bretagne and Normandy, who came to fish on the banks of, said to have discovered the grand bank about the year 1504, 17; Jean Denys sails from Harfleur to, *ib*; Thomas Aubert makes a voyage from Dieppe to, *ib*; Stephen Gomez sails as far north as cape Ras, on the coast of, 30; Cartier arrives at cape Bonavista on the coast of, 34; the colony under the command of Mr. Hore, land on the east side of the island, 36; Francis de la Roque, lord of Roberval, created vice roy and lieutenant general of, 37; Cartier lands on the island, 38; Roberval coming to America near the island meets Cartier returning, *ib*; fishery at the banks of Newfoundland, deemed an object of national importance by the English, and encouraged by legislative enactments, 39; becomes the resort of European nations for the purpose of fishing, 42; discovery of claimed by some of them, *ib*; sir Humphrey Gilbert arrives at the island, 48; takes formal possession and makes laws for the government of the island, 49; his formal possession forms the basis of the present right of the crown of England to the fisheries, 50; sir Humphrey Gilbert explores the island, *ib*; debates on the fisheries in parliament, 235, 245; attempt to pass a bill for the purpose of protecting the fisheries of, 235, 239, 249, 250.
- New York, the Dutch build a fort on the south end of Manhattan island, where the city of New York now stands, 191.
- Okisko, king of the Weopopomewks, with twenty-four of his principal men, comes to governor Lane to own subjection to the queen of England, 64.
- Ouygondy, the large river on the west side of the bay of Fundy, discovered by Champlain, now known by the name of St. John's River, 88.
- Papists, fears of parliament in relation to, 245; the two houses of parliament petition James I. to remove them from the court, *ib*; the duke of Buckingham supposed to have colligated with the Puritans to cause the penal statutes against them to be more strictly enforced. See *Roman Catholics*.
- Parker, William, joins an association for the purpose of colonizing America, 93.
- Parry, William, undertakes to assassinate Queen Elizabeth, 226; is incited thereto by various persons, *ib*; he wavers in the execution of his purpose, is betrayed and thrown into prison, 227.
- Paspiha, an Indian chief, gives to captain Newport the ground upon which he afterwards built James town, 101.
- Patapsco, river, supposed to have been discovered by captain John Smith in his first exploring expedition, and by him named Bolus river, 116; description of by captain Smith, 141. See *Bolus river*.
- Patawomeke, river, discovered by captain Smith in his first exploring expedition in the Chesapeake bay, 117; description of the natives inhabiting its banks, 118; description of the river by captain Smith, 133.
- Patawomeck, the chief town of the tribe of Indians called Patawomecks, 118; its location, *ib*; number of the tribe, 138.
- Pawtuxent, river, visited by captain Smith, 132; his description of it, 140.
- Penguin island, the expedition under the command of Mr. Hore touches at, 36.
- Pentecost harbour, discovered and named by captain George Weymouth, its probable situation, 82.
- Pemisapan, the name assumed according to the Indian custom, by Wingina, king of Wokoken, 63. See *Wingina*.

- Pius V. pope, issues a bull of excommunication against queen Elizabeth, 225.
- Plymouth, company, or North Virginia colony, a new association formed for the purpose of colonizing America, 91; its members, 93; letters patent granted to it by James I., 92; send out a vessel under the command of Henry Challous, 97; their vessel captured on its voyage out, by a Spanish fleet, carried into Spain and confiscated, *ib*; another ship is sent out under the charge of Thomas Hanham, and at the expense of lord chief justice Popham, *ib*; attempt to plant a colony in the northern part of America, (now called Maine,) at the mouth of the Kennebeck river, 182; their success, *ib*; petition the king for a new grant, 235; tenor of the grant and the use made of it by the company, 236.
- Pocahontas, daughter of the emperor Powhatan, saves the life of captain Smith, 104.
- Point Ployer, captain Smith touches at, while exploring the Chesapeake bay, 109.
- Ponce de Leon, an officer in the island of Hispaniola, obtains leave to conquer and settle Porto Rico, 18; is displaced from the governorship of it, *ib*; fits out some vessels at his own expense, *ib*; his inducements and motives, *ib*; discovers Florida, *ib*; origin of the name of Florida, *ib*.
- Pontgravé, a merchant of St. Malo, makes several trading voyages to Tadoussac in Canada, 85; accompanies Mons. de Chauvin to Tadoussac, *ib*; returns to Europe and again sails for Tadoussac, in command of a squadron fitted out by Mons. de Chatte, the successor of Mons. de Chauvin, *ib*; his discoveries and return to Europe, *ib*; takes command of a ship under the direction of the Sieur de Monts, 87; is left by him at Port Royal as his lieutenant, 89; is obliged to re-embark all the inhabitants except two, *ib*; sets sail for France, *ib*; hears of Pontrincourt's arrival at cape Canso, and returns to Port Royal, 90; resigns his command, *ib*.
- Pontrincourt takes command of one of the ships of the Sieur de Mont, 87; determines to settle at Port Royal, 88; sails for America, 89; relieves the colony under the charge of Pontgravé at Port Royal, 90; returns to France, *ib*; by his representations induces the king to regrant to the Sieur de Monts all his former patents, *ib*.
- Popham, George, joins an association for the purpose of colonizing America, 93; becomes one of the patentees of the Plymouth company, 97; goes to America in charge of a colony sent out by his brother, sir John Popham, 182; lands his colony at Parker's island, at the mouth of the Kennebec river, *ib*; his death and return of the colony, *ib*.
- Popham, sir John, lord chief justice of England, becomes a member and one of the patentees of the Plymouth company, 97; fits out a vessel at his own expense, *ib*; return of the vessel sent out by him, *ib*; sends out two ships with colonists, under the command of George Popham and Raleigh Gilbert, 182; they land on Parker's island at the mouth of the Kennebec river, *ib*; the ships return to England, *ib*; death of George Popham, *ib*; death of sir John Popham, and return of the colony to England, *ib*.
- Portuguese, attempt to discover a nearer route to the East Indies, 13; discover Brazil, *ib*; claim all the lands discovered by Columbus by virtue of a grant from the pope, 14; dispute with the court of Spain in relation to the discoveries of Columbus, *ib*; the dispute is referred to pope Alexander VI., *ib*; his decision, *ib*; the Portuguese dissatisfied with his decision, 15; their claims referred to six plenipotentiaries and their decision, *ib*.
- Port Royal, afterwards known as Annapolis Royal, discovered by Pontrincourt, 87; the Sieur de Monts removes his colony from L'isle de St. Croix to, 88.
- Pory, Mr. John, one of the patentees mentioned in the second charter of Virgi-

- nia, 146; is made one of the council under sir George Yeardley, *ib*; is appointed councillor and secretary of state of the province, *ib*; is discharged from the secretaryship, *ib*; makes an exploring expedition on the eastern shore of the Chesapeake bay, 148; is visited by the king of Pawtuxent, *ib*; visits Pawtuxent, 149; is kindly treated by the inhabitants, 150; visits Assacomoco and the intended treachery of the Indians there, 151.
- Powhatan, a powerful Indian chief, 104; his daughter Pocahontas saves the life of captain Smith, *ib*; the extent of his dominion, 106.
- Pring, captain Martin, sails from England with two small vessels fitted out by the Rev. Richard Hackluyt, 78; his course and discoveries, *ib*; lands at Whitsou bay, *ib*; his suspicions of the friendship of the natives, 79; returns to England, 80.
- Puritans, their origin, 206; their doctrines and the divisions among them, 207; are persecuted by queen Elizabeth, 208; their expectations on the accession of James I., 210; persecution of, during the reign of James I. by the court of high commission, *ib*. See *Brownists*.
- Quebec, a colony settled on the present site of, by Champlain, 90.
- Quiyough, a river visited by captain Smith while exploring the Chesapeake bay, 120; its supposed location, *ib*.
- Raleigh, sir Walter, accompanies his half brother, sir Humphrey Gilbert, 47; his favour and influence with queen Elizabeth, 52; his personal attractions and military character, *ib*; anecdotes related of, 53; determines to prosecute the schemes of sir Humphrey Gilbert, 54; obtains a renewal of the letters patent, to himself, *ib*; obtains the pecuniary assistance of his friends, and sends out two ships under the charge of captains Amidas and Barlow, 55; they sail from England and arrive off the coast of Florida, *ib*; they take possession of an island called by the natives Wokoken, *ib*; are visited by the natives, 56; their description of them, *ib*; sir Walter, out of compliment to Elizabeth, names the country thus discovered Virginia, 58; hastens his preparations for taking possession of it, 59; sends out a second expedition under the care of sir Richard Grenville, *ib*;—See *Grenville*. Sends out another ship to succeed the colony, which arrives a few days after the departure of governor Lane and his colonists, 67; determines to attempt another settlement, *ib*; makes a grant to captain John White, 68; creates a corporation by the name of the governor and assistants of the city of Raleigh, *ib*; appoints captain John White governor of the city of Raleigh and dispatches him with a colony, *ib*; fits out a vessel for the relief of the colony, which is detained by order of the queen to aid her fleet against the Spanish Armada, 72; sir Walter assigns his patent, *ib*; makes several attempts to gain some tidings of the unfortunate colony planted under his direction at Roanoke, 76.
- Raleigh, city of, sir Walter Raleigh creates a corporation by the name of the governor and assistants of the city of Raleigh, 67; appoints captain John White governor of, 68.
- Rastal, Mr., joins the expedition of Mr. Hore to colonize Newfoundland, 36.
- Ratcliff, John, goes to America with captain Christopher Newport, 99; is named one of the council of Virginia by James I., 100; succeeds Wingfield as president of the James town colony, 103.
- Rawranoke, (sometimes written Roanoke,) white beads made use of by the natives of Virginia instead of money, 121.
- Reformation, rise and progress of the, 196; its introduction into England, 202; Henry VIII. at first violently opposed to, but afterwards connives at its introduction, 203; persecution of the reformers by Mary, 204; is reintroduced into England by Elizabeth, 205.
- Reeves, Michael, (commonly called Servetus) escaping from imprisonment at

- Vienna, takes refuge at Geneva, 200; is accused of heresy by Calvin, and by him cast into prison, 201; is burnt alive by the order of Calvin, *ib*.
- Roanoke island, called by the natives Wokoken, discovered by captains Amidas and Barlow, 55; they are invited by Granganimeo, brother of the king of Wokoken, to visit him at his residence on the island, 57; said to have been the limit of their discoveries during this voyage, 58; sir Richard Grenville arrives at the island, where he makes a settlement, and leaves captain Lane in charge of the colony, *ib*; governor Lane returns to, after an unsuccessful search for a copper mine, 63; distress of the colonists under governor Lane, 65; arrival of sir Francis Drake at the island and departure of the colony,—see *Lane, captain John*,—66; captain John White arrives at the island in charge of a colony, 69;—See *White, captain John*. Governor White returns to Roanoke after an absence of two years and makes an unsuccessful search for the colony left by him, 73; sir Walter Raleigh makes several unsuccessful endeavours to ascertain the fate of the second colony left at Roanoke, 76.
- Robinson, Mr. John, becomes pastor of a body of Puritans called Brownists, 213; emigrates with his flock to Holland, 214; their sufferings there, *ib*; they determine to emigrate to America, 215; they send delegates to England to negotiate a grant with the Virginia company, who return without being successful, *ib*; they again send delegates to the Virginia company to negotiate a grant, 218; they set sail for America, *ib*; arrive off Cape Cod, 219; land at Plymouth, (called by the natives, Patuxent,) 221.
- Roche, Marquis de la,—see *De la Roche*.
- Roman Catholics, acts passed in the assembly of the province of Maryland against the Roman Catholics, 195; causes of the severe statutes enacted against them in England, 222 to 232; their conduct on the accession of James I., 227; their excesses, together with those of the Puritans, give rise to two political parties, 230.
- Roman Catholic church, struggle between the Roman Catholic church and the Church of England, 194.
- Roque, Francis de la,—see *De la Roque*.
- Russel's isles, (now known by the name of Watt's islands,) in the Chesapeake bay, discovered and named by captain Smith, while exploring the Chesapeake, 107.
- Sables, isle of, the Marquis de la Roche attempts to plant a colony on the, 84; his ill success, *ib*.
- Salvage, Thomas, accompanies John Pory on his exploring expedition, 148; his history, 151.
- Sands, sir Edwin, is chosen governor and treasurer of the Virginia company in the place of sir Thomas Smith, 217; prosperity of the colony under his administration, *ib*; propositions and opinions made by him during the debate on the tobacco trade in parliament, 234; in the debate on the Newfoundland fisheries, 236.
- Sasquesahanocks, an Indian nation visited by captain Smith, 128; description of them by captain Smith, 142; remarks on their reputed size, 151.
- Sarapinagh, an Indian nation discovered by captain Smith while exploring the Chesapeake bay, 112; their supposed location, *ib*.
- Servetus,—see *Reeves*.
- Seymour, Edward, duke of Somerset, is appointed guardian to Edward VI., and instils into his mind the principles of the reformation, 203.
- Smith, captain John, goes to America with captain Christopher Newport, 99; is arrested and kept in close confinement during the voyage, *ib*; is named one of the council of Virginia by James I., 100; is accused of treason and excluded from the council, 102; proposals are made in the council to send him to

England to be tried, *ib*; he is released from confinement, obtains a hearing, is acquitted of all the charges brought against him, and takes his seat in the council, *ib*; the important services rendered by him to the colony, 103; is captured by the natives, and detained by them for the space of seven weeks, 104; his life is saved by the interposition of Pocahontas, daughter of Powhatan, *ib*; is restored to the colony, *ib*; he determines to explore the Chesapeake bay, *ib*; leaves James town on his exploring expedition, 105; his company, *ib*; his route and discoveries, 106 to 126; crosses the bay to Smith's isles, 106; is directed by two of the natives to Accomack, *ib*; his treatment there, 107; enters the river Wighcomoco, 108; reaches Point Ployer, 109; falls in with the river Cuskarawoock, 110; the conduct of the natives on its banks, 111; is informed of the Massawomacks, and goes in search of them, 113; anchors at Riccard's cliffs, 114; discovers the river Patapsco, which he names Bolus river, 116; his companions importune him to return, *ib*; his address to them, 117; enters and sails up the Patowmack, 117; his reception by the savages living on the river, 118; goes up the Quiyough river, and discovers a mine, supposed by his company to be silver, 120; determines to ascend the Rappahanock, but is prevented by the grounding of his boat at the mouth, 123; is stung by a fish at Stringray island, but recovers, 123; returns to James town, *ib*; determines to make a second voyage for the purpose of exploring the bay, 124; his route and discoveries, 125 to 146; sets out on his second voyage, but is detained by contrary winds at Kecoughtan, where he is feasted by the natives, *ib*; crosses the Patowmack and goes to Bolus river, 125; arrives at the head of the bay and meets some of the Massawomecks, *ib*; enters the Tockwogh river and is kindly welcomed by the natives, 127; is informed of the Sasquesahanocks, and sends an interpreter to them, who returns with sixty of their tribe, 128; description of the Sasquesahanocks, their behaviour and ceremonies, 129; returns to explore the Patuxent, 132; his description of the country, its climate, soil, productions and inhabitants, 133 to 144; makes a search for some traces of the colony left on the island of Roanoke, under the charge of captain John White, 145; remarks on the general character of, 155; returns to James town after his voyage, and enters on the duties of his office of president, 181; makes a map of the Chesapeake and its rivers, *ib*; is employed by some English merchants to go to America for the purposes of traffic, 192; leaves England and arrives in America, *ib*; leaves his vessels and sails round the coast of New England, *ib*; makes a map of the coast, which on his return he presents to prince Charles, who names the country New England, 193; sails again for America, but is captured by pirates, 194.

Smith, Mr. John, becomes pastor of a body of Puritans, called Brownists, 213; emigrates to Holland with his flock, 214. See *Brownists*.

Smith, sir Thomas, governor and treasurer of the Virginia company, is succeeded in his offices by sir Edwin Sands, 217.

Smith's isles, discovered by captain Smith while exploring the Chesapeake bay, 106.

Somers, sir George, joins an association for the purpose of colonizing America, 93.

Somerset, duke of,—see *Seymour*.

Soto, Ferdinand de, governor of Cuba, receives from Charles V. of Spain the title of Marquis of Florida, with authority to acquire that country by conquest, 33; sails from Havana with a formidable armament, and lands at the bay of Spiritu Sancto, *ib*; his route and wanderings, *ib*; dies of a fever on the banks of the Mississippi, *ib*; return of the survivors of the expedition, *ib*.

South Virginia company, obtains letters patent from James I., 92; the members of

- the company, 93; their charter, 93 to 95; sends out three vessels under the command of captain Christopher Newport, 99; their route and the difficulties encountered by them, 100; they enter the mouth of the Chesapeake, *ib*; some of the crew land and are attacked by the savages, *ib*; they search for a suitable place to plant a colony, 101; they sail up the James river, are invited on shore by the natives, and kindly treated, *ib*; they settle at James town, 102; sufferings of the colonists, 103; they determine to abandon James town, but are dissuaded from their intention by captain Smith, 104; are relieved by the arrival of two ships under the command of captain Newport, *ib*; their fancied discovery of a gold mine, *ib*; the company petitions for a new organization, 133; their motives, *ib*; grant to them by James I. of the second charter of Virginia, *ib*; nature of the change in their charter, 184; is divided into two colonies, 235.
- Spaniards, proceed rapidly with their discoveries in the southern part of America, 18; take advantage of the discoveries made by Ponce de Leon, 19; send an expedition to Florida to kidnap the natives for the purpose of making them labour in the mines of Saint Domingo, 19; their success, 20; their settlements in South America excite the emulation of the English, 42.
- Spanish settlements in South America excite the emulation of the English, 42.
- Spiritu Sancto, Ferdinand de Soto, accompanied by his armament for the conquest of Florida, arrives at the bay of, 33.
- St. Lawrence, gulf of, Caspar de Cortereal goes from Newfoundland to the mouth of the gulf, 15; Jean Denys publishes a map of the gulf, 17; one of the ships sent out by Henry VIII. is lost in the gulf, 31; Cartier sails up the gulf, 34; Cartier again arrives at the gulf and gives it its present name, 34.
- St. Lawrence river, Mons. de Chauvin sails up the river as far as Trois Rivières, 85; Pontgravé is empowered to extend his discoveries up the St. Lawrence, *ib*; sails up it as far as the falls of St. Louis, 85.
- St. Croix, L'Isle de, discovered by Champlain, 88; the Sieur de Monts winters there, *ib*; his removal, *ib*.
- St. Bartholomew, massacre of, 223.
- St. John's river,—see *Ouygondy*.
- Stingray island, visited by captain Smith in his first exploring expedition, 123; occasion of its name, *ib*.
- Strafford, earl of,—see *Wentworth*.
- Stulpitz, John, commences an attack on the Roman Catholic doctrine of indulgences, 197; obtains the assistance of Martin Luther, *ib*.
- Supremacy, oath of, all persons coming into the colony of Virginia required to take the oath of, 185; oaths of supremacy and allegiance tendered to lord Baltimore on his arrival in Virginia, and his refusal to take them, 255; power of the assembly to tender these oaths, *ib*; differences among the Catholics in relation to them, 256.
- Swedes, a colony of, go to America for the purpose of settling there, 260; land at cape Inlopen (since called Henlopen,) *ib*; are molested by the Dutch settled at New York, who build a fort at cape Inlopen, *ib*; they build a fort and make a settlement on Christina creek, *ib*.
- Tadoussac, in Canada, its situation, 85; is visited several times by Pontgravé *ib*,—see *Pontgrave*.—Mons. de Chauvin makes a voyage to, and leaves some of his crew, *ib*; makes a second voyage to, *ib*.
- Toags, an Indian nation visited by captain Smith, on his first exploring expedition in the Chesapeake bay, 119; their supposed location, *ib*.
- Tobacco trade, debate on in Parliament, 234.
- Tockwogh river, discovered by captain Smith, 126; supposed to be the Sassafras, 143.

- Tockwoghges, an Indian nation on the Tochwogh river, visited by captain Smith, 127; their treatment of him, *ib*; their ceremonies, 129.
- Thorne, Mr. Robert, by his representations induces Henry VIII. to fit out two ships for the purpose of discovering a northwest passage to the East Indies, 31.
- Vasquez, Luke, his expedition to Florida, 19; sails from St. Domingo with two ships, *ib*; arrives at the southern coast of South Carolina, *ib*; kidnaps and carries off a large number of the natives, 20; renews his attempts in 1724 and 1725, *ib*; his return to Hispaniola, *ib*; his death, *ib*.
- Vega, Garcilasso de la, one of the historians who accompanied the expedition of Ferdinand de Soto to Florida, 33.
- Verazzini, John, his voyages, 20; extent of his second voyage, 21; his account of his second voyage, *ib*; sails from Madeira with a crew of fifty men, *ib*; discovers land, 22; conjectures as to what part of the American continent was discovered by Verazzini in his second voyage, 22; his description of the country, 24; discovers and names Claudian island, (now called Martha's Vineyard,) 26; goes into the harbour of Newport, 27; description of the natives whom he found there, *ib*; description of the surrounding country, 28; his return to France, 30; his third voyage, *ib*; he is lost, *ib*.
- Virginia, is discovered by captains Amidas and Barlow, 55; is named Virginia by sir Walter Raleigh, in compliment to queen Elizabeth, 58; letters patent granted by James I., commonly called the first charter of Virginia, 91; council of Virginia established by James I., 94; nature of the council, 95; description of, by captain Smith, 133 to 138; second charter of Virginia granted by James I. to the South Virginia company, 183; tenor of the charter, 184; third charter of Virginia granted by James I. to a company consisting of several individuals of London and Bristol, 190; tenor of the third charter, 191; upon the dissolution of the Virginia charters, it becomes necessary to provide a government for the colonies, and a commission issues to Henry Viscount Mandeville and others, 247; lord Baltimore makes a visit to Virginia, and determines to settle there, 254; his scheme is opposed by the colonists there, 262; the causes and apparent policy which gave rise to their opposition, *ib*.
- Virginia company, the new, 61; resolve to fit out a vessel for America, 74; captain Bartholomew Gosnold chosen commander, *ib*; his voyage and discoveries, 75.
- Wanchese, a native of Roanoke, who went to England with captains Amidas and Barlow, 58; returns to Virginia with sir Richard Grenville, 59.
- Wentworth, sir Thomas, (afterwards earl of Strafford,) sir George Calvert obtains a seat in parliament through the influence of, 233.
- Weopopomewks, a powerful Indian nation, possessing all the country from Albe-marle sound and Chowan river to the Chesapeake, own subjection to the queen of England, 64.
- Werowance, an Indian title, signifying chief or king, 106.
- Weymouth, captain George, is sent out by some English noblemen to seek a north west passage, 81; sails from England, *ib*; his route and discoveries, 82.
- White, captain John, obtains a grant from sir Walter Raleigh, by which he is created governor of the city of Raleigh, in Virginia, to be founded by him, 68; sails from England with a small fleet, and arrives at cape Hatteras, *ib*; sails along the coast as far as the Chesapeake bay, *ib*; lands at Roanoke, and searches for the colony left there under the charge of governor Lane, 69; lands his colony there, *ib*; is visited by Manteo, the friendly Indian who informs him of the fate of the small colony left by sir Richard Grenville, on his last visit, *ib*; his troubles with the Indians, 70; returns to England for further

- supplies, but is constrained to remain, 72; returns to Roanoke after an absence of two years, 73; his arrival at Roanoke, and unsuccessful search for the colony left by him, 73; captain Smith makes further search for the colony left by him, but is unsuccessful, 145.
- Whitson bay, captain Martin Pring lands at, 78; he suspects hostile designs on the part of the natives, 79; his departure and return to England, 80.
- Wighcomoco river, discovered by captain Smith while exploring the Chesapeake bay, 107; its location, supposed to be the Pocomoke river, 108.
- Wilmington, a colony of Swedes build a fort and make a settlement on the present site of, 260.
- Wingfield, Edward Maria, joins an association for the purpose of colonizing America, 93; goes to America and is chosen the first president of the colony at James town.
- Wingina, king of the island of Wokoken, 56; his residence, 57; entertains sir Richard Grenville, 60; his hostility to the English, 62; attempts to starve the English out of the country, 64.
- Wokoken, (afterwards Roanoke island,) an island taken possession of by the ships sent out by sir Walter Raleigh, 55; loss of one of sir Richard Grenville's ships in the harbour of, 59;—see *Roanoke*.
- Wyatt, sir Francis, on the dissolution of the charters of Virginia, James I. issues a commission to sir Francis Wyatt and others, vesting in them the government of Virginia, 263.
- Wynne, Edward, sent out to Avalon with a small colony by sir George Calvert, 241; lands at Ferryland, *ib*; his colony is visited by sir George Calvert in person, 242.
- Wythe, John, a painter, remains with the colony left at Roanoke by sir Richard Grenville, 61.
- Zuinglius, one of the early reformers, 198; his doctrines, *ib*,

Jan index to
Vol II for end of
the book





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THE
HISTORY OF MARYLAND,

FROM

ITS FIRST SETTLEMENT, IN 1633,

TO

THE RESTORATION, IN 1660,

WITH

A COPIOUS INTRODUCTION,

AND

NOTES AND ILLUSTRATIONS.

BY JOHN LEEDS BOZMAN.

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CONTENTS.

CHAPTER I.

Cecilius, lord Baltimore, prepares for sending out a colony—The Virginians petition against his charter—Decision thereupon against them—Lord Baltimore appoints his brother to conduct the colony—Their arrival in the Chesapeake—Their reception by the Virginians—They explore the Patowmack—The governor fixes upon St. Mary's for the first settlement—Circumstances favorable to them—Proceedings of the colonists after landing—Great harmony between the natives and colonists—Interrupted by Clayborne and his party—The first assembly called and held—Clayborne resorts to open military force—The lord proprietor's instructions relative to grants of lands—Grants of small lots in the town of St. Mary's—The nature of the first form of government of the colony—An ordinance for that purpose—Proclamation in England against emigration—The isle of Kent reduced to lord Baltimore's government—The county of St. Mary's organized—An assembly of the province called—The second assembly of the province meet—The assembly take into consideration the laws sent in by the proprietor—The laws sent rejected—Courts of justice meet—Proceedings therein against Clayborne's party—The inhabitants of the isle of Kent refuse to submit—Governor Calvert proceeds with a military force against them—Secretary Lewger authorised to hold the assembly—Act of attainder against William Clayborne—Trial of Thomas Smith, one of Clayborne's men—Inquiry by the assembly into the conduct of captain Cornwallis—Resolution of the assembly relative to servants—The assembly dissolved—The lord proprietor refuses his assent to the laws enacted by the assembly—William Clayborne's petition to the king in council, and order thereupon—The nature of the provincial traffic with the Indians—Their coasting trade—Their trade to Europe—The state of religion among the colonists—The nature of the administration of justice with them, - - - - 23

CHAPTER II.

Lord Baltimore assents to the right of the assembly to originate laws—An assembly of the province called—Their proceedings—The constitutional act for establishing the house of assembly—The house sit as a court of justice, and adjudge several cases civil and criminal—The general act, ordaining certain laws for the government, to wit, for securing the rights of holy church—for prescribing an oath of allegiance to his majesty—for securing the rights and prerogatives of the lord proprietary—for securing the rights and liberties of the people—for the better administration of justice and conservation of the peace—Some particular laws for the punishment of crimes—as for treasons, felonies, and enormous offences—Laws for erecting courts of justice—A court of admiralty—County courts—Court of Chancery—A pretorial court—The authority and jurisdiction of justices of peace—the particular offences under their cognizance—Inferior executive officers—the administration of justice in the isle of Kent more particularly regulated—Oaths of office prescribed—Officers for the

probate of wills and granting administration—Military discipline—Payment of officers, fees and public charges provided for—Derelict property, directions concerning it—A short insolvent law—The planting of tobacco and Indian corn regulated—Weights and measures—Customs or duties on the exportation of tobacco—The constitution of the general assembly more specially provided for—The duration of commissions in case of the death of the lord proprietary—A water mill and a town house, the building of them directed—Other bills of this session not recognised in the general act, as—the act for descending of lands—for assuring of titles to land—for enrolling of grants—Also for peopleing of the province, and for limiting the times of servants, 93

CHAPTER III.

Hostilities with the Indians—Preparations for training the militia—A further division of the county of St. Mary's—Lord Baltimore's right to the royal game of the province—Clayborne's demand of his property within the province—An assembly called—Their proceedings—Remarks on the acts of the session—Judicial powers exercised by the assembly—Animosity of the Indians—Session of assembly in 1641—Some few acts of assembly therein—The session of 1642—Their proceedings—Religious discontents—The acts passed at the last session—New conditions of plantation—Maryland settlements on the Schuylkill—Attempt in England to revive the old charters of Virginia—The effect of that attempt upon Maryland—War with the Indians—Another session of assembly in 1642—Proceedings therein—Remarks on some of the acts of this last session—Preparations against the Indians, - - 161

CHAPTER IV.

The new commission for the government—An assembly called and meet—Their proceedings—Debate on the act, "touching passes," or the right of emigration—Exemption of the governor and his servants from militia duty—Debate on the act "providing for officers"—The act "for the support of the government"—An act for the impressment of vessels, men, &c.—Intercourse with the Indians regulated—Colonists compelled to take patents for their lands—Perplexed state of affairs in the province—governor Calvert returns to England—Appoints Giles Brent, esq. to be governor in his absence—Exemption from military duty—Mr. Giles Brent qualifies as governor—Measures to repeal the incursions of the Indians—Proceedings of the New Haven settlers on the Delaware—Instructions from the lord proprietary to governor Brent—Influence of the civil war in England on the affairs of the province—An ordinance of parliament relative to the colonies—New instructions from the lord proprietary to governor Brent—Embarrassed state of the trade of the province—Ingle's rebellion—Hostilities with the Indians—Treaty with the Susquehannocks, proposed by Mr. Lewger—Disagreement of governor Brent thereto—Governor Calvert returns from England with a new commission—Some few variances between the new commission and the former—Perturbed state of the colony—Attempt to call an assembly—Clayborne repossesses himself of the isle of Kent, 233

CHAPTER V.

Captain Hill elected governor, in the absence of governor Calvert—Governor Calvert returns to St. Mary's with a small army—Hill resigns upon terms—Governor Calvert convenes the assembly before called by Hill—The first instance on the records of the province of the distinction between the upper and lower houses of assembly—Proceedings of the assembly—An embargo and martial law proclaimed—The "acts for customs" on imports and exports en-

forced—The English ordinance of 1646-7, relative to customs on goods exported to the plantations, and the first English excise law—The isle of Kent submits, and the government thereof is settled—Governor Calvert's death and character—Thomas Greene, esqr., his successor—Mr. Hill renews his claims on the province—Corn (private property,) *pressed*, or seized, for the use of the garrison of St. Inigoe's fort—War with the Indians of Nanticoke and Wicomico—Cautious proceedings to regulate the return of the disaffected—The exportation of corn and horses prohibited—The administratrix of Governor Calvert adjudged to be his lordship's *attorney in fact*, as governor Calvert had been—An assembly called—They meet—Their proceedings—Proclamation of a general pardon—The provincial court adjourned, and proclamation thereof made—Affairs of England having relation to Maryland—Governor Greene removed and governor Stone appointed in his stead—Strictures on his commission—A new oath prescribed to the governor—A new commission of the council—Mr. Hatton sent in as secretary—A new great seal—Office of muster-master general instituted—A new commission also for the commander of the isle of Kent—Sixteen laws sent in, with a commission for propounding them to the assembly—New conditions of plantation—Quarrel between governor Green and the commander of the isle of Kent—Question, as to the right of forfeitures for treason, accruing within a manor—Affairs of the mother country in relation to Maryland—Session of assembly—Remarks on the acts of this session—The act concerning religion—The letter of the assembly to the lord proprietary—His lordship's reply—the first settlement of the Puritans at Providence, now Annapolis—New conditions of plantation, and grants of land—Mr. Greene appointed governor in the absence of governor Stone—Charles, the second, proclaimed king—Governor Stone returns, and convenes the assembly—Their proceedings—The acts of this session—The governor visits Providence, and organizes it into a county called Ann Arundel—The commanders of the isle of Kent and Ann Arundel authorised to grant warrants for land therein—King Charles the second, appoints a new governor of Maryland—The appointment of Mr. Gibbons, of New England, to be one of the council—An assembly called—The ordinance of parliament of 1650—The colony at Providence refuses to send delegates to the assembly—His lordship's message on this subject—Sir William Berkeley's attempt to fix a settlement on Palmer's island—Lord Baltimore's direction for remedying the loss of the records—and for civilizing the Indians—New directions for settling the province—Mr. Mitchell removed from the council—A law against the spreading of false news, proposed by his lordship—Proceedings in England for the "reducement" of the colonies—Instructions to commissioners for the reducement of Virginia—The commissioners sail on their expedition—Captain Curtis arrives in Virginia, which is reduced—He, with the other commissioners, proceeds to Maryland, which submits, - - - 292

CHAPTER VI.

The state of the province after the "reducement"—The commissioners return to Virginia—The commissioners return to Maryland again—The government reinstated by them in captain Stone—Clayborne's claim to the isle of Kent—A treaty with the Susquehannock Indians—Complaints against Captain Vaughan, as commander of the isle of Kent—Hostilities of the Eastern Shore Indians—Grants of lands from lord Baltimore neglected in Anne Arundel and the isle of Kent—A scarcity of corn—Origin of the famous navigation act—Hostilities apprehended from the Western Shore Indians—Affairs of England in relation to Maryland—Proceedings of governor Stone relative to patents for lands and

issuing of writs—The early contests about the lands on the Delaware—State of the Roman Catholic religion at this time in Maryland—Cromwell proclaimed in Maryland as lord protector—Calvert county first erected—Governor Stone revolts, and the province is again “reduced”—The government vested in captain Fuller and a council—An assembly called, which meets—Their proceedings—Governor Stone re-assumes his office and powers as governor—organizes a military force—And marches towards the Severn—The battle on the Severn—The estates of the *delinquents*, (governor Stone’s party,) sequestered—Proceedings in England relative to these provincial disputes—Fendall appointed governor—He is arrested and imprisoned by the Puritans—The government of England favourable to lord Baltimore—The agents, Bennett and Mathews, persevere in their opposition to his lordship—Lord Baltimore’s instructions to his governor—Lord Baltimore sends his *brother* Philip Calvert to Maryland—Mr. Barber appointed deputy governor in the absence of governor Fendall—Fendall goes to England—The divided state of the province—Another Puritan assembly is called, and meets—The agreement between lord Baltimore and the agents, Bennett and Mathews—Lord Baltimore’s instructions to his governor for the time being—Governor Fendall returns to Maryland—Negotiations between the proprietary and Puritan governors for a surrender of the province to the former—The final agreement and surrender in consequence thereof, - - - - - 444

CHARTER OF MARYLAND.

[As this volume may probably circulate further than the limits of the State of Maryland, and where the reader may not readily have access to a copy of the Charter of that State, as granted to lord Baltimore, it is thought most proper to insert here the translation of it, from the original latin, as it appears in Bacon's Collection of the laws of Maryland, which translation has always been deemed so authentic as nearly to have superseded the use of the original.]

CHARLES,* by the grace of GOD, of *England, Scotland, France, and Ireland*, KING, Defender of the Faith, &c. To ALL to whom these presents shall come, GREETING.

II. Whereas our well beloved and right trusty subject CECILIUS CALVERT, Baron of BALTIMORE, in our kingdom of *Ireland*, son and heir of GEORGE CALVERT, knight, late baron of BALTIMORE, in our said kingdom of *Ireland*, treading in the steps of his father, being animated with a laudable and pious zeal for extending the *christian religion*, and also the territories of our empire, hath humbly besought leave of us, that he may transport, by his own industry, and expense, a numerous colony of the *English* nation, to a certain region, herein after described, in a country hitherto uncultivated, in the parts of *America*, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges, and jurisdictions, appertaining unto the wholesome government, and state of his colony and region aforesaid, may by our royal highness be given, granted, and confirmed unto him, and his heirs.

III. KNOW YE therefore, that WE, encouraging with our royal favour, the pious and noble purpose of the aforesaid barons of BALTIMORE, of our special grace, certain knowledge, and mere motion, have GIVEN, GRANTED, and CONFIRMED, and by this our present CHARTER, for US, our heirs, and successors, do GIVE, GRANT, and CONFIRM, unto the aforesaid CECILIUS, now baron of BALTIMORE, his heirs, and assigns, all that part of the

* Charles the first, of England.

Peninsula, or *Chersonese*, lying in the parts of *America*, between the ocean on the east, and the bay of *Chesapeake* on the west; divided from the residue thereof by a right line drawn from the promontory, or head-land, called *Watkin's Point*, situate upon the bay aforesaid, near the river *Wighco*, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of *Delaware* on the north, which lieth under the fortieth degree of north latitude from the æquinoctial, where *New England* is terminated: and all the tract of that land within the metes underwritten, (*that is to say*,) passing from the said bay, called *Delaware bay*, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river of *Pattowmack*, thence verging towards the south, unto the farther bank of the said river, and following the same on the west and south, unto a certain place called *Cinquack*, situate near the mouth of the said river, where it disembogues into the aforesaid bay of *Chesapeake*, and thence by the shortest line unto the aforesaid promontory or place, called *Watkin's Point*, so that the whole tract of land, divided by the line aforesaid, between the main ocean, and *Watkin's Point*, unto the promontory called *Cape Charles*, and every the appendages thereof, may entirely remain excepted for ever to us, our heirs, and successors.

IV. Also We do GRANT, and likewise CONFIRM unto the said baron of BALTIMORE, his heirs, and assigns, all islands and islets within the limits aforesaid, all and singular the islands, and islets, from the eastern shore of the aforesaid region, towards the east, which have been, or shall be formed in the sea, situate within ten marine leagues from the said shore; with all and singular the ports, harbors, bays, rivers, and straits belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays, and straits, situate, or being within the metes, bounds, and limits aforesaid, with the fishings of every kind of fish, as well of whales, sturgeons, or other royal fish, as of other fish in the sea, bays, straits, or rivers, within the premises, and the fish there taken: and moreover all veins, mines, and quarries, as well opened as hidden, already found, or that shall be found within the region, islands, or limits aforesaid, of gold, silver, gems, and precious stones, and any other whatsoever, whether they be of stones, or metals, or of any other thing, or matter whatsoever: and furthermore the PATRONAGES and ADVOWSONS of all churches which (with the increas-

ing worship and religion of CHRIST,) within the said region, islands, islets, and limits aforesaid, hereafter shall happen to be built; together with licence, and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premises, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of ENGLAND;* With all, and singular, such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets, and limits aforesaid, to be had, exercised, used, and enjoyed, as any bishop of *Durham*, within the bishoprick or county palatine of *Durham*, in our kingdom of *England*, ever heretofore hath had, held, used, or enjoyed, or of right could, or ought to have, held, use, or enjoy.

V. And WE do by these presents, for US, our heirs and successors, MAKE, CREATE, and CONSTITUTE HIM, the now baron of BALTIMORE, and his heirs, the TRUE and ABSOLUTE LORDS and PROPRIETARIES of the region aforesaid, and of all other the premises (except the before excepted) saving always the faith and allegiance and sovereign dominion due to US, our heirs, and successors; to HAVE, HOLD, POSSESS, and ENJOY the aforesaid region, islands, islets, and other the premises, unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, to the sole and proper behoof and use of him, the now baron of BALTIMORE, his heirs and assigns, for ever. To HOLD of US, our heirs and successors, kings of England, as of our castle of *Windsor*, in our county of *Berks*, in free and common soccage, by fealty only for all services, and not *in capite*, nor by knight's service, YIELDING therefore unto US, our heirs and successors, TWO INDIAN ARROWS of those parts, to be de-

* It would seem from this and the preceding section, that all that follows from the word "England," of this *fourth* section above, relates to the *whole* of the *grant*, and is not confined to the "patronages and advowsons of churches," as would seem at first from the manner in which it is printed in the translation in Bacon's laws. In the original latin, in the opposite page, (as it is in Bacon's laws,) the word "Cum" is printed with a capital letter, which denotes, that a new sentence was intended to begin there; and that the sentence "rights, jurisdictions," &c. refers to *all* that was granted in the *third* and preceding part of the *fourth* section. The words,—"*as well by sea as by land*," &c. confirm this construction. I have, therefore, made a *semicolon*, instead of a *comma*, (as it is printed in Bacon's laws,) at the word "England," and altered the small w of the word "with" into a capital W.

livered at the said castle of *Windsor*, every year, on Tuesday in Easter-week: and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

VI. Now, that the aforesaid region, thus by us granted and described, may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, KNOW YE, that WE, of our more special grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a PROVINCE, as out of the plenitude of our royal power and prerogative, WE do, for US, our heirs and successors, ERECT and INCORPORATE the same into a PROVINCE, and nominate the same MARYLAND, by which name WE will that it shall from henceforth be called.

VII. And forasmuch as WE have above made and ordained the aforesaid now baron of BALTIMORE, the true LORD and PROPRIETARY of the whole PROVINCE aforesaid, KNOW YE therefore further, that WE, for US, our heirs and successors, do grant unto the said now baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, WE repose the greatest confidence) and to his heirs, for the good and happy government of the said PROVINCE, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact LAWS, of what kind soever, according to their sound discretions, whether relating to the public state of the said PROVINCE, or the private utility of individuals, of and with the advice, assent, and approbation of the free men of the same PROVINCE, or of the greater part of them, or of their delegates or deputies, whom WE will shall be called together for the framing of LAWS, when, and as often as need shall require, by the aforesaid now baron of BALTIMORE, and his heirs, and in the form which shall seem best to him or them, and the same to publish under the seal of the aforesaid now baron of BALTIMORE and his heirs, and duly to execute the same upon all persons, for the time being, within the aforesaid PROVINCE, and the limits thereof, or under his or their government and power, in sailing towards MARYLAND, or thence returning, outward-bound, either to *England*, or elsewhere, whether to any other part of our, or of any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the guilty of the offence require it, by privation of

member, or life, by him the aforesaid now baron of BALTIMORE, and his heirs, or by his or their deputy, lieutenant, judges, justices, magistrates, officers, and ministers, to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordain judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of BALTIMORE, or his heirs, shall seem most fitting: and also to remit, release, pardon, and abolish, all crimes and offences whatsoever against such laws, whether before, or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, pretorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, pretorian judicatories, and tribunals, in all actions, suits, causes, and matters whatsoever, as well criminal as personal, real and mixed, and protorian: Which said laws, so to be published as abovesaid, WE will, enjoin, charge, and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So NEVERTHELESS, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs and rights of this our kingdom of *England*.

VIII. And forasmuch as, in the government of so great a PROVINCE, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said PROVINCE, their delegates, or deputies, can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately on such emergent occasion, be called together, WE, therefore, for the better government of so great a PROVINCE, do will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now baron of Baltimore; and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesome ordinances from time to time, to be kept and observ-

ed within the PROVINCE aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances, we will to be inviolably observed within the said PROVINCE, under the pains to be expressed in the same. So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeably to the laws, statutes, or rights of our kingdom of *England*; and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

IX. Furthermore, that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages, or of other enemies, pirates, and ravagers: WE, therefore, for us, our heirs and successors, do by these presents give and grant power, license and liberty, to all the liege-men and subjects, present and future, of us, our heirs and successors, except such to whom it shall be expressly forbidden, to transport themselves and their families to the said PROVINCE, with fitting vessels, and suitable provisions, and therein to settle, dwell, and inhabit; and to build and fortify castles, forts, and other places of strength, at the appointment of the aforesaid now baron of BALTIMORE, and his heirs, for the public and their own defence; the statute of fugitives, or any other whatsoever to the contrary of the premises in any wise notwithstanding.

X. We will also, out of our more abundant grace, for us, our heirs and successors, do firmly charge, constitute, ordain, and command, that the said PROVINCE be of our allegiance; and that all and singular the subjects and liege-men of us, our heirs and successors, transplanted, or hereafter to be transplanted into the PROVINCE aforesaid, and the children of them, and of others their descendants, whether already born there, or hereafter to be born, be and shall be natives and liege-men of us, our heirs and successors, of our kingdom of *England* and *Ireland*; and in all things shall be held, treated, reputed, and esteemed as the faithful liege-men of us, and our heirs and successors, born within our kingdom of *England*; also lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of *England*, and other our dominions, to inherit, or otherwise

purchase, receive, take, have, hold, buy, and possess, and the same to use and enjoy, and the same to give, sell, alien, and bequeath; and likewise all privileges, franchises and liberties of this our kingdom of *England*, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born, or to be born within our said kingdom of *England*, without impediment, molestation, vexation, impeachment, or grievance of us, or any of our heirs or successors; any statute, act, ordinance, or provision to the contrary thereof, notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and cheerful mind: KNOW YE, that WE, of our especial grace, certain knowledge, and mere motion, do, by the tenor of these presents, give and grant, as well to the aforesaid baron of BALTIMORE, and to his heirs, as to all other persons who shall from time to time repair to the said province, either for the sake of inhabiting, or of trading with the inhabitants of the province aforesaid, full license to ship and lade in any the ports of us, our heirs and successors, all and singular their goods, as well moveable as immoveable, wares and merchandizes, likewise grain of what sort soever, and other things whatsoever necessary for food and clothing, by the laws and statutes of our kingdoms and dominions, not prohibited to be transported out of the said kingdoms; and the same to transport, by themselves, or their servants or assigns, into the said PROVINCE, without the impediment or molestation of us, our heirs or successors, or of any officers of us, our heirs or successors, (SAVING unto us, our heirs and successors, the impositions, subsidies, customs, and other dues payable for the same goods and merchandizes,) any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barbarians themselves, as of other enemies, pirates and ravagers, probably will be feared, therefore WE have given, and for us, our heirs, and successors, do give by these presents, as full and unrestrained power, as any captain-general of an army ever hath had, unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, by themselves, or by their captains, or other officers, to summon to their standards, or to array all men, of whatsoever condition, or wheresoever born, for the time being,

in the said province of MARYLAND, to wage war, and to pursue, even beyond the limits of their province, the enemies and rava-gers aforesaid, infesting those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion, to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our CHARTER, do give unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, power, liberty, and authority, that, in case of rebellion, sudden tumult, or sedition, if any (which God forbid) should happen to arise, whether upon land within the province aforesaid, or upon the high sea in making a voyage to the said province of MARYLAND, or in returning thence, they may, by themselves, or by their captains, or other officers, thereunto deputed under their seals (to whom WE, for US, our heirs and successors, by these presents, do give and grant the fullest power and authority) exercise martial law as freely, and in as ample manner and form, as any captain-general of an army, by virtue of his office may, or hath accustomed to use the same, against the seditious authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law, or discipline of war.

XIV. Moreover, lest in so remote and far distant a region, every access to honours and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war, of us, and our kingdoms; for this cause, WE, for US, and heirs and successors, do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns, to confer favours, rewards and honours, upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in *England*;) also to erect and incorporate towns into boroughs, and boroughs into cities, with suitable privileges and immunities, according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things

in the premises, which to him or them shall seem fitting and convenient; even although they shall be such as, in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also, and by these presents do, for us, our heirs and successors, give and grant license by this our CHARTER, unto the aforesaid now baron of BALTIMORE, his heirs and assigns, and to all persons whatsoever, who are, or shall be, residents and inhabitants of the province aforesaid, freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandizes whatsoever, which shall be collected out of the fruits and commodities of the said province, whether the product of the land or the sea, into any of the ports whatsoever of us, our heirs and successors, of *England* or *Ireland*, or otherwise to dispose of the same there; and, if need be, within one year, to be computed immediately from the time of unlading thereof, to lade the same merchandizes again, in the same, or other ships, and to export the same to any other countries they shall think proper, whether belonging to us, or any foreign power, which shall be in amity with us, our heirs or successors: Provided always, that they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of the kingdom of ENGLAND, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called MARYLAND, shall not be burdened.

XVI. And furthermore, of our more ample special grace, and of our certain knowledge, and mere motion, We do, for us, our heirs and successors, grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, full and absolute power and authority to make, erect, and constitute, within the province of MARYLAND, and the islands and islets aforesaid, such, and so many sea ports, harbours, creeks, and other places of unlading and discharge of goods and merchandizes out of ships, boats, and other vessels, and of lading in the same, and in so many, and such places, and with such rights, jurisdictions, liberties, and privileges, unto such ports respecting, as to him or them shall seem most expedient. And, that all and every the ships, boats and other vessels whatsoever, coming to, or going from the province aforesaid, for the sake of merchandizing, shall be laden and unladen at such ports only as shall be so erected and con-

stituted by the said now baron of BALTIMORE, his heirs and assigns, any usage, custom, or any other thing whatsoever to the contrary notwithstanding. Saving always to us, our heir and successors, and to all the subjects of our kingdoms of *England* and *Ireland*, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the seas, bays, straits and navigable rivers, as in the harbours, bays and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down and take hedging-wood and twigs there growing, and to build huts and cabins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, We will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, from time to time, for ever, shall have, and enjoy the taxes and subsidies payable, or arriving within the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, for wares bought and sold, and things there to be laden, or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents, for us, our heirs and successors, to assess and impose the said taxes and subsidies there, upon just cause, and in due proportion.

XVIII. And furthermore, of our special grace, and certain knowledge, and mere motion, We have given, granted, and confirmed, and by these presents, for us, our heirs, and successors, do give, grant, and confirm, unto the aforesaid now baron of BALTIMORE, his heirs and assigns, full and absolute license, power and authority, that he, the aforesaid now baron of BALTIMORE, his heirs and assigns, from time to time hereafter, for ever, may and can, at his or their will and pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate

parts and parcels of the premises, to any person or persons willing to purchase the same, as they shall think convenient, to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee simple, or fee tail, or for term of life, lives, or years; to hold of the aforesaid now baron of BALTIMORE, his heirs and assigns, by so many, such, and so great services, customs and rents OF THIS KIND, as to the same now baron of BALTIMORE, his heirs and assigns, shall seem fit and agreeable, and not immediately of us, our heirs or successors. And we do give, and by these presents, for us, our heirs and successors, do grant to the same person and persons, and to each and every of them, license, authority, and power, that such person and persons, may take the premises, or any parcel thereof, of the aforesaid now baron of BALTIMORE, his heirs and assigns, and hold the same to them and their assigns, or their heirs, of the aforesaid baron of BALTIMORE, his heirs and assigns, of what estate of inheritance soever, in fee simple or fee tail, or otherwise, as to them and the now baron of BALTIMORE, his heirs and assigns, shall seem expedient; the statute made in the parliament of lord EDWARD, son of king HENRY, late king of *England*, our progenitor, commonly called the "STATUTE QUIA EMPTORES TERRARUM," heretofore published in our kingdom of *England*, or any other statute, act, ordinance, usage, law, or custom, or any other thing, cause or matter, to the contrary thereof, heretofore had, done, published, ordained or provided to the contrary thereof notwithstanding.

XIX. We, also, by these presents, do give and grant license to the same baron of BALTIMORE, and to his heirs, to erect any parcels of land within the province aforesaid, into manors, and in every of those manors, to have and to hold a court-baron, and all things which to a court-baron do belong; and to have and to keep view of frank-pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further We will, and do, by these presents, for us, our heirs and successors, covenant and grant to, and with the aforesaid now baron of BALTIMORE, his heirs and assigns, that we, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other

taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid, for their goods, lands, or tenements within the same province, or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandizes within the province aforesaid, or within the ports or harbours of the said province, to be laden or unladen: And we will and do, for us, our heirs and successors, enjoin and command that this our declaration shall, from time to time, be received and allowed in all our courts and pretorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance thereof, charging all and singular the officers and ministers of us; our heirs and successors, and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt any thing to the contrary of the premises, or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now baron of BALTIMORE, and his heirs, and the aforesaid inhabitants and merchants of the province of MARYLAND aforesaid, and their servants and ministers, factors and assigns, in the fullest use and enjoyment of this our CHARTER.

XXI. And furthermore We will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of *England*, and dependent on the same for ever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause, or sentence, contained in this our present CHARTER, we will, charge and command, THAT interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the more beneficial, profitable, and favour-

able to the aforesaid now baron of BALTIMORE, his heirs and assigns: provided always, that no interpretation thereof be made, whereby God's holy and true christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express motion* be not made in these presents of the true yearly value or certainty of the premises, or of any part thereof, or of other gifts and grants made by us, our heirs and predecessors, unto the said now lord BALTIMORE, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof in any wise notwithstanding.

XXIII. In witness whereof We have caused these our letters to be made patent. Witness ourself at *Westminster*, the twentieth day of *June*, in the eighth year of our reign.

* Mr. Bacon, in his edition of the charter, and the translation as above, has here subjoined the following note.—“The remainder from this mark * is copied from the old translation, published (together with some assembly proceedings) by order of the lower house, in the year 1725.” To the same sentence, (to wit, *Ea quod expressa Mentio, &c.*) of the original latin, in the opposite page, he has subjoined another note, as follows:—“So endeth the attested copy, taken in the year 1758, from the original record remaining in the Chapel of the Rolls, and signed by *Henry Rooke* clerk of the rolls, which was lent me by his excellency *Horatio Sharpe*, esqr., from whence the above” (the charter in the original Latin, which is here omitted,) “is transcribed.—The said copy is entitled at the head, *Tertia Pars Patentium de Anno Regni CAROLI Octavo*; and at the end is written as in sect. xxiii.”

N. B. A copy of the charter of Maryland, in the original Latin, (taken from Bacon's Collection of the Laws of Maryland,) is inserted in Hazard's Collections, vol. 1, p. 327.

HISTORY OF MARYLAND.

CHAPTER I.

Cecilius, lord Baltimore, prepares for sending out a colony—The Virginians petition against his charter—Decision thereupon against them—Lord Baltimore appoints his brother to conduct the colony—Their arrival in the Chesapeake—Their reception by the Virginians—They explore the Patowmack—The governor fixes upon St. Mary's for the first settlement—Circumstances favorable to them—Proceedings of the colonists after landing—Great harmony between the natives and colonists—Interrupted by Clayborne and his party—The first assembly called and held—Clayborne resorts to open military force—The lord proprietor's instructions relative to grants of lands—Grants of small lots in the town of St. Mary's—The nature of the first form of government of the colony—An ordinance for that purpose—Proclamation in England against emigration—The isle of Kent reduced to lord Baltimore's government—The county of St. Mary's organized—An assembly of the province called—The second assembly of the province meet—The assembly take into consideration the laws sent in by the proprietor—The laws sent rejected—Courts of justice meet—Proceedings therein against Clayborne's party—The inhabitants of the isle of Kent refuse to submit—Governor Calvert proceeds with a military force against them—Secretary Lewger authorised to hold the assembly—Act of attainder against William Clayborne—Trial of Thomas Smith, one of Clayborne's men—Inquiry by the assembly into the conduct of captain Cornwallis—Resolution of the assembly relative to servants—The assembly dissolved—The lord proprietor refuses his assent to the laws enacted by the assembly—William Clayborne's petition to the king in council, and order thereupon—The nature of the provincial traffic with the Indians—Their coasting trade—Their trade to Europe—The state of religion among the colonists—The nature of the administration of justice with them.

Cecilius Calvert, baron of Baltimore, having, on the twentieth of June, 1632, obtained his charter for the province of Maryland, as before mentioned, had now to make preparations for carrying into effect his father's intended plan of colonization. The procuring a sufficient number of colonists, and the furnishing them with all conveniences and necessities essential to a residence in a remote country, which was as yet a wilderness, unavoidably protracted the time of their departure from England to some considerable length.

CHAP. I.
1632.

Cecilius, lord Baltimore, prepares for sending out a colony.

CHAP. I. In the mean time, however, much discontent was industriously excited among the planters in Virginia, by inducing them to suppose, that the very soil upon which they trod, and which they had earned by their fatigues and dangers, was about to be taken from under their feet, and by this charter transferred to others. A petition therefore was framed in the name of the planters, and in May, 1633, presented to his majesty, in which they remonstrated, "That some grants have been lately obtained, of a great portion of lands and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments, and a bar put to that trade which they have long since exercised towards their supportation and relief, under the confidence of his majesty's royal and gracious intentions towards them." The king referred the consideration of this petition to his privy-council, and agreeably to this reference, the council, on the fourth of June, in the same year, made an order, in which they appointed the twenty-eighth of that month, when the business should be heard, and that all parties interested should then attend. This was done accordingly, and their lordships having heard the cause, ordered that the lord Baltimore and the planters of Virginia should meet together* between that time and the third of July, 1633, and endeavour to accommodate their controversy in a friendly manner. Also, that the propositions made by either party should be set down in writing, with their several answers and reasons, to be presented to the board on that day. This was likewise accordingly done, and on the third of July, same year, it was finally ordered, "That the lord Baltimore should be left to his patent, and the other parties to the course of law, according to their desire. But, for the preventing of further questions and differences, their lordships did also think fit and order, that, things standing as they do, the planters on either side, shall have free traffic and commerce each with the other, and that neither party shall receive any fugitive persons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, lastly, that they shall sincerely entertain all good correspondence, and assist each other on all occasions, in such manner as becometh fellow-subjects and members of the same state."†

1632.
The Virginians
petition
against his
charter.

Decision
against
them.

* This must have meant, that the planters, by their agents or attorneys in England, should meet the lord Baltimore.

† See this order in council at large, in note (I) at the end of this volume.

As we are at liberty at this day to judge of this transaction CHAP. I.
 calmly and dispassionately, it is impossible not to perceive, that 1633.
 the planters in Virginia (by whom it may be supposed to be meant, in the above order, the actual settlers and colonists resident in Virginia, and not any of the numerous members of the old Virginia company) were instigated to this opposition to lord Baltimore's charter by a few influential persons among them, (particularly William Clayborne) who sought to obtain a property in different portions of the territories of Virginia, without putting themselves to the trouble or expense of obtaining a legal conveyance or charter for the same. Unquestionably by the laws of England, under which they professed to live, the right of granting a property in the soil of the country, was originally, after its discovery by Cabot, vested in the king, and subsequently in the treasurer and company of Virginia under the second and third charters from the king. But as the right of making grants of the same, heretofore appertaining to the company, was taken away by the judgment in the court of king's bench, under the *quo warranto*, which judgment was certainly binding until legally reversed, such right, by the laws of the kingdom, reverted back again to the king, according to the feudal principles of the monarchy. The planters in Virginia, then, had really no interest in the question. None of their individual rights or particular plantation, on which they lived, were at all invaded. We may, indeed, adopt the observations of a late historian of Virginia upon this subject:—"This grant to lord Baltimore did not interfere with the rights of former settlers, or with the government of Virginia. His object was the establishment of a new colony, which would be her friend and neighbour and ally, against the assaults of the Indians or machinations of distant powers. The prosperity and reputation of the nation would be advanced by new settlements; and an immense territory was yet reserved to Virginia, far exceeding her wants and her powers. In every point of view the transfer appears judicious and salutary."*—It must be acknowledged, however, that these observations of this historian are rather inconsistent with his ill-timed invective in the same page against the members of the council, principally on account of the preceding order. It does not appear from the order, that "*they acknowledged the justice of the claim of the planters,*" as he alleges. The *justice* of the claim could be only

* Burk's Hist. of Virg. vol. 2, p. 39.

CHAP. I. between the king and those persons, whose names, as inserted
 1633. in the second charter, (constituting the old Virginia company,) form a very large list of the nobility and gentry of England, to whom the territories of Virginia then in truth belonged,* if they did not to the crown. The *justice* of the judgment on the *quo warranto*, it is true, appears at this day to have been questionable, but that of the preceding order the reverse.

Lord Baltimore appoints his brother to conduct the colony.

His lordship being now invested, as he supposed, with a fair title to his province, and having nearly completed the necessary preparations for the emigration of the colonists, contemplated at first to have attended them himself in person; but afterwards changing his mind, from what cause we are not informed, he appointed his brother, Leonard Calvert, Esq. to go in his stead, in the character of governor,† and joined in commission with him Jeremy Hawley and Thomas Cornwallis, Esqrs. as assistants or counsellors.‡ The number of colonists consisted of about two hundred, of whom the names of the chief or principal characters are mentioned in history, as follows, Richard Gerard, Edward Winter, Frederick Winter, and Henry Wiseman, Esqrs.; Mr. John Saunders, Mr. Edward Cranfield, Mr. Henry Green, Mr. Nicholas Fairfax, Mr. John Baxter, Mr. Thomas Dorrel, captain John Hill, Mr. John Medcalfe, and Mr. William Saire. Many of these are said to have been gentlemen of fortune, and the most, if not all of them, were Roman Catholics.§

* They had expended more than £100,000 sterling of their own estates, in the support of the colony in Virginia, at the time of the dissolution of their charters. Holmes's Annals, vol. 1, p. 233.

† In most of the early public acts of the province, he is commonly styled "his lordship's *lieutenant-general*," &c.; but as the term *governor* is a word of the same import, and sometimes used in some of the old records of the province, and is also of more modern usage, and therefore more intelligible, it is here adopted. The term *lieutenant-general*, as thus used in the early colonization of the province, was probably adopted from that applied to the king's viceroy or governor of Ireland, who was at this period so termed.

‡ This commission, it seems, is not extant among any of the records of the province. *Kilty's Landholder's Assist.* p. 64.—The term *assistant* seems to have been in use, about this time, as synonymous to that of *councillor*. It appears to have been so used in Massachusetts on the first settlement of New Plymouth. See the Extracts from the New Plymouth Records, published in Hazard's Collections, vol. 1. p. 413.

§ The above list of principal colonists, who first emigrated to Maryland, is taken from *Oldmixon's Brit. Emp.* in Amer. vol. 1, p. 184, and the *Mod. Univ. Hist.* vol. 40, p. 466; the latter apparently copying it from the former.—"George Calvert, Esq. brother to the governor," is also mentioned in both these histories as one "of the principal persons," who came with the first colonists. But as I do not find his name, or any allusion to it in any of the records of the province,

They sailed from Cowes, in the Isle of Wight, on the 22d of November, 1633, and taking the old route by the Azores and West Indies, stopped at the islands of St. Christopher's and Barbadoes, where they staid some time, most probably for the purpose of timeing their arrival in the Chesapeake in the most favorable season of the year for colonization in that climate. It was, therefore, the 24th of February following, (1634, new style,) when they arrived off Point Comfort in Virginia. In consequence, as it would seem, of written commands from the king,* no molestation or hindrance to their pursuits was offered by the government of Virginia; and it may be inferred, that, in obedience to those commands, all such "assistance" and supplies as the colony of Virginia could afford, were furnished at their request. Here also, as it appears, an interview took place between governor Calvert and captain Clayborne, when the governor intimated to Clayborne, that his settlements on the isle of Kent would be considered as a part of the Maryland plantation. On the third of March the Maryland colonists proceeded from Point Comfort to Patowmack. Governor Calvert, not being apprised, perhaps, of any former names appropriated to the two capes or points of land at the mouth of the Patowmack river, called the south point St. Gregory's and the north point St. Michael's; but as they are both now known by other appellations, the southern being called Smith's point, from the celebrated founder of Virginia, captain John Smith, and the northern, Point Look-out, it is probable that they had received these denominations before the arrival of the Maryland colony.

Sailing up the Patowmack about fourteen leagues, they came to an island called *Heron* island, and anchored under another neighbouring isle, to which they gave the name of *St. Clements*.†

I have omitted it, presuming, that, if the first lord Baltimore (George Calvert) left a son of that name, and he had accompanied the first colonists to Maryland, he would have been recognized in some station or early proceedings of the colony. But he might possibly have been a younger brother to both lord *Cecil* and *Leonard* (the governor,) and coming out merely to accompany his brother, might have returned again to England soon after their arrival. This, together with the loss of most of the earliest records of the province, for the two or three first years, may account for his name not now appearing in any provincial record.

* The substance of these commands appears from a letter of Sir John Harvey, quoted by Chalmers, (Annals, ch. ix. and note 17,) who states it thus:—"The king desirous to encourage the noble purpose of lord Baltimore, required, that all lawful assistance should be given him, in seating himself and his associates in Maryland."

† These names do not appear in either Griffith's map of Maryland, or *Madsen's* of Virginia, the two most modern. In *Griffith's* map an island is placed off

CHAP. I.
1634.
Their departure from England and arrival in the Chesapeake.

They explore the Patowmack.

CHAP. I. Here the governor landed, and setting up a cross, in the Roman Catholic manner, took formal possession of the country,—“for our Saviour, and for our sovereign lord the king of England.” 1634. In order to make discoveries, the governor here left his ships, and taking two boats, or pinnaces as they were then called, proceeded up the Patowmack about four leagues, and landed on the south or Virginia side of the river; but found that the Indians had fled from them through fear. He thence still proceeded up the river about nine leagues, and came to an Indian town, on the Virginia side of the river, called Patowmack town, said to be the place now called New Marlborough; where the chief, called the *Werowance*, being an infant, the territory was governed in his minority by his uncle, whose name was *Archihau*. By him they were received in a very friendly manner.* From this town they sailed up the Patowmack a considerable distance further, to *Piscataway* creek; where they found many Indians assembled, and among them an Englishman, captain Henry Fleet, who had lived there several years in great esteem with the natives. Through the influence of captain Fleet, the *Werowance* or chief, of the tribe there assembled, was prevailed upon to go on board the governor’s pinnace. The governor asked him, whether he was willing, that he and his people should settle in his country, in case they found a place convenient for them. The *werowance* replied, “I will not bid you go, neither will I bid you stay, but you may use your own discretion.” The Indians on shore, finding that the *werowance* staid on board longer than they expected, crowded down to the water side, to look after him, fearing that the English had killed him; and they were not satisfied till he showed himself to appease them.

The governor, on reflection, thinking that it could not, perhaps, be so advisable to settle so high up the river, in the infancy of the colony; and influenced somewhat, probably, by the cautious answer of the *werowance*, determined to seek for a settlement further down the river. He therefore returned down the Patowmack to St. Clement’s isle again, taking captain Fleet

Clement’s branch or river, which empties into the Patowmack, and which is there called *Blackstone’s* island; but in Madison’s map, *Blackstone’s* island is placed higher up the Patowmack. It is most probable, however, that the island opposite to the mouth of *Clement’s* branch is the island to which at this time they affixed the name of St. Clement’s. In a loose estimation, it will nearly answer the distance mentioned up the Patowmack, fourteen leagues or forty-two miles.

* See note (II) at the end of this volume.

with him. They then proceeded to a small river on the north side of the Patowmack, within four or five leagues of its mouth, which the governor called St. George's river. Sailing up this small river about four leagues, they came to an Indian town, called by the natives—*Yoamaco*, from whence tribe here inhabiting, was called *Yoamacoes*. CHAP. I.
1634.

The reader will recollect, that it has been before mentioned, that Powhatan's territories, over which he was emperor or grand chief, was said to extend along the lowlands upon the Chesapeake, from Cape Henry to the mouth of Patuxent, in Maryland, and that his empire consisted of at least forty different tribes.* As governor Calvert, in his present exploremment of the Patowmack, found, it seems, several distinct independent chiefs, called werowances, it is probable, that they were the chiefs of so many distinct tribes, who formerly composed a part of that grand confederacy, which had existed under Powhatan; called, from him, the Powhatan confederacy, in contradistinction to the two other grand confederacies, denominated the Manahoacs and the Monocans. But, as Powhatan had now been dead some years, it does not appear clearly, whether his successor was, at the time of the arrival of our colonists, the grand chief or emperor of the whole of the former Powhatan confederacy, or whether the Yoamacoes considered themselves as belonging to that confederacy, and subject to Opitchapan, who was Powhatan's successor.

The governor, having landed here, entered into a conference or treaty with the werowance, and acquainted him with the cause of his coming; to which the Indian said little, probably not wishing to encourage a settlement among them; but, inviting him to his cabin, he entertained him as kindly as he could, and at night gave him his own bed to lie on. The next day he showed him the country; and the governor, determining to make the first settlement here, sent orders to the ship and boats to come to him. To pave the way to his peaceable admission into the country, he presented the werowance, and principal men of the town, with some English cloth, axes, hoes, and knives, which they accepted with pleasure, and freely consented that he and his company should dwell in one part of their town, reserving the other for themselves. Those Indians, who inhabited that part which was assigned to the English, readily abandoned

* See Mr. Charles Thompson's note (5,) in the Appendix to Jefferson's Notes on Virginia. Also, Burk's Hist. of Virg. vol. 1, p. 112.

CHAP. I. their huts to them. The natives further agreed to leave the whole town to the English, as soon as they could gather their corn; which they faithfully performed: and it was further stipulated, that until that time, the two nations should live in a friendly manner together. If any injury was done on either part, the nation offending was to make satisfaction.* The governor then, on the 27th of March, 1634, caused the colonists to land, and according to the agreement, take possession of the town, which they named *St. Mary's*.

Circumstances favourable to them.

A circumstance is mentioned to have occurred at this time, which very much facilitated this treaty with the Indians. The Susquehanocks, who lived about the head of the bay, were in the practice of making incursions on their neighbours, partly for dominion, and partly for booty; of which last, women were most desired by them.† The Yoamacoës, fearing these Susquehanocks, had, a year before the Maryland colony arrived, resolved to desert their habitations, and remove higher into the country. Many of them were actually gone, and the rest were preparing to follow them, about the time when the English arrived: so that the voluntary surrender of their town is easily accounted for.

Proceedings of the colonists after landing.

The first thing the governor caused to be done after the colonists were landed, was to erect two buildings, one for a guard house, and the other for a store house. Some of the colonists he also set to work, in making preparations for the planting of corn. In a few days afterwards, the governor received a friendly visit from Sir John Harvey, then governor of Virginia. From this circumstance it may be inferred, that however unfavourably the historians of Virginia may have represented the character of this governor, he did not enter into the opposition which had been exerted in that province against lord Baltimore's charter, and the settlement of the Maryland colony; or at least he chose to conform to his majesty's recommendation of the Maryland colony, as before mentioned.‡—We are not informed of any material incidents relative to governor Harvey's visit. While he

* See note (III.) at the end of this volume.

† Stealing of women seems to have been a practice incident to the early periods of a state of society. It was common with both the Greeks and Barbarians, at the time when Paris run away with Helen, which occasioned the siege of Troy. It was so common, says Thucydides, that no woman durst live near the sea coast. *Anc. Univ. Hist.* vol. 5, p. 551.

‡ See a note (IV.) at the end of this volume.

remained there governor Calvert received also the visits of several Indian Werowances from the interior parts of the country; among others came the king of Patuxent, who had formerly been a prisoner to the English in Virginia. To please the Indians, the governor made an entertainment on board of the ship then at anchor in the river: the king of Patuxent was placed at the table, in a kind of state between the governor of Virginia and the governor of Maryland. But, an incident occurred, which threatened to destroy the pleasure of the feast: a Patuxent Indian coming on board, and seeing his king thus seated, started back, and refused to enter into the cabin, supposing that his king was confined there as a captive, and would have leaped overboard, had not the king himself come and satisfied him, that he was in no danger.

The store house being finished, and it becoming necessary to unload the ship and bring the stores for the colony on shore, the governor, thinking that doing it with a little pomp and state would impress the natives with respect for the colonists, ordered it to be done with as much solemnity as they could. The colours were brought on shore, and the colonists were all paraded under arms. Vollies of musquetry were fired, which were answered by discharges of cannon on board the ship. The two kings or werowances of Patuxent and Yoamaco, being both present at this exhibition, with many other Indians of Yoamaco, the former took that occasion to advise the Indians of Yoamaco to be careful to keep the league they had made with the English. He remained in the town several days afterwards; and, it is said, that when he took his leave, he made this remarkable speech to the governor: "I love the English so well, that if they should go about to kill me, if I had so much breath as to speak, I would command the people not to revenge my death; for I know they would not do such a thing, except it were through my own fault."*

During the remainder of the year, while the English and Indians lived together in St. Mary's, according to their stipulation, the utmost harmony appears to have prevailed among them. The natives went every day to hunt with the "new comers," for deer and turkeys; which, when they had caught, being more expert at it, they either gave to the English, or sold for knives, beads, and such trifles. They also supplied them with fish in plenty. As a certain mark of the entire confidence, which these

Great harmony between the natives and colonists.

* Oldmixon's Brit. Emp. in Amer. vol. 1, p. 184, or 188.—Mod. Univ. Hist. vol. 40, p. 467.

CHAP. I. unsuspecting people placed in the colonists, their women and
 1634. children became, in some measure, domesticated in the English families.

We have here to express a regret, that the loss of most of the early records of the province, in about ten years after this period, during the civil commotions which agitated the mother country, and had extended to the colonies, has irreparably deprived us of other interesting particulars of the first transactions of the Maryland colony.*

The arrival of the colony in the early part of the year, was attended with such fortunate circumstances, that we cannot but suppose, that it was intentionally so done, in order to have time to erect habitations against the succeeding winter, and to raise sufficient corn for their next year's subsistence. It seems, however, that they had taken the precaution to bring along with them from Barbadoes, an additional supply of Indian corn, beyond the flour and bread of their English stores. They had, very judiciously, preconcerted their departure from England, so as to pass the winter months in the West Indies, and by that means to arrive in the colder latitude of the Chesapeake at the commencement of the vernal season. They availed themselves of this advantage, by planting Indian corn at the proper time of the year, in the grounds bordering on the town, which had been already cleared by the Indians. Their crops proved so luxuriant, that in the next year, or in the year after, it is said they exported a considerable quantity of Indian corn to New England, to purchase salt fish and other provisions.†

Interrupted by Clayborne and his party.

From concurrent circumstances, and indeed from the assertions of historians, we are induced to suppose, that among the first causes which tended to disturb this harmony between the English and natives, were the improper insinuations circulated among the latter by captain William Clayborne and his party. They most unjustly and falsely endeavoured to create a belief among the Indians, that the Maryland colonists were Spaniards,

* Captain Richard Ingle, who associated with captain Clayborne, seized the records of the province in 1644, and carried them to Virginia. Most of them were lost or embezzled.—See Bacon's preface to his addition of the laws of Maryland.

† Oldmixon's Brit. Emp. in Amer. vol. 1, p. 188;—where it is said, that their exportation of corn to New England, at the time above mentioned, amounted to *ten thousand* bushels, but as that seems to be rather too large a quantity for the grounds, which they could then have cleared, it is here stated with some hesitation.

and enemies of the English in Virginia; probably availing themselves, in proof thereof, of the similitude in their religious ceremonies. Clayborne had, it seems, prior to the arrival of governor Calvert and his colony, settled himself, with some others, on the isle of Kent, which is situated in the Chesapeake, higher up than St. Mary's, and within the lines of the lord Baltimore's charter. This he had done in virtue of his license to traffic with the natives, and thereupon claimed a right to the property of the soil, not only of this island, but of another settlement which he had also fixed at the mouth of the Susquehanah. Lord Baltimore, perhaps informed of these circumstances by his brother, issued orders, in September of this year, (1634,) that if Clayborne would not submit to his government, he should be seized and punished.* He was not, however, taken; but being provoked that the lord Baltimore had obtained a grant, which included these places to which he had been accustomed to trade, and where he had now made some settlements, he sought all the means in his power to defeat the success and prosperity of the colony at St. Mary's. Among these means, was this ungenerous and cruel attempt to set the savages at war upon this infant colony. This ridiculous suggestion was at first believed by the simple natives, and suddenly they withdrew their company from St. Mary's. Our colonists were then employed in erecting comfortable habitations for themselves, in and about the town; but, alarmed at this alteration in the behaviour of the Indians, they ceased from the work on their buildings, and betook themselves to the erection of a fort for their security; which, it is said, they accomplished in about six weeks, and then returned again to their employments in finishing their houses. In a short time, however, the Indians became sensible of this deception, and resorted again, as formerly, to the colony.†

About the commencement of the succeeding year, 1635, (to wit, on the 26th of February, 1634-5, old style,) it appears, that

* The 12th and 13th sections of the charter, seem to have authorized the exercise of martial law in such cases. Chalmers's Annals, ch. ix. p. 210, who cites Virg. Pap. 75 B. p. 125.

† Oldmixon's Brit. Emp. in Amer. vol. 1, p. 188, 189. Mod. Univ. Hist. vol. 40, p. 468. These authorities are corroborated by what is stated by Chalmers, in his Annals, ch. ix. note 21, that "among the Virg. Pap. 75 B. p. 139," (in the plantation office,) "there is an examination of the king of Patuxent relative to Clayborne's intrigues;" from which he states in substance as above.

CHAP. I. a legislative assembly of the province was, for the first time, called and held at St. Mary's. In consequence, most probably, of the loss or destruction of the records, by capt. Ingle, as before mentioned, a very small remnant only of the proceedings of this assembly is left to us. It seems, however, sufficient to establish the fact, that an assembly of the freemen of the province sat at this time; and, as we are assured by a learned annalist of the British American provinces, who had recourse to authentic documents in the English plantation office, it is certain, that "among other wholesome laws," it was then enacted, "that offenders, in all murders and felonies, shall suffer the same pains and forfeitures as for the same crimes in England."* But these acts being dissented to by the lord proprietary; principally, as we have grounds to suppose, on account of his claiming a right, by the charter, of propounding or *initiating* all laws to be enacted by the provincial legislature, the above mentioned act, for the punishment of capital crimes, did not become a law, and the want of it seems to have thrown the subsequent house of assembly, 1637-8, into some confusion, as will be seen in its place.

Clayborne
resorts to
open mili-
tary force.

Clayborne, however, was not content with his secret mode of annoying the colony. He resorted to open military force in his opposition to lord Baltimore's government. Early in the year 1635, he granted his special warrant or commission under his hand, to a certain Ratcliffe Warren, then commonly known as lieutenant Warren, to seize and capture any of the pinnaces or other vessels belonging to the government or colonists of St. Mary's; and in pursuance thereof an armed pinnace or boat belonging to Clayborne, was fitted out for that purpose, manned with about fourteen men, among whom was a certain Thomas Smith, "gentleman," who appears to have been second in command, next to Warren, on this expedition. The government at St. Mary's, probably apprised of these measures of Clayborne, immediately equipped also two armed pinnaces or boats, which sailed under the command of Thomas Cornwallis, esqr., one of the assistants or commissioners before mentioned. These two

* See Chalmers's Annals, ch. ix. p. 210 and 232, note 20; where he states that "among the Virg. Pap. [75 B. p. 126,] there is a copy of the act of attainder of Clayborne, the *title* only of which Mr. Bacon had seen, which recites the proceedings of an assembly held at St. Mary's the 26th of February, 1634-5."—In the list of "bills" agreed to at the assembly of 1637-8, published in Bacon's Collections of the Laws of Maryland, is "A bill for the attainder of William Clayborne;" but no copy of that or any other of the bills of that session, are now to be found on the records of the State.

armaments met, it seems, some time in April or May of this year, 1635, in either the Pocomoke or Wighcomoco rivers on the eastern shore of the province,* where a battle commenced between them, by Clayborne's men firing first on Cornwallis's boats, as alleged in the proceedings of the assembly in this case.† Cornwallis immediately returned the fire; and the result was, that lieutenant Warren and two of his men were killed, and one of Cornwallis's men. Clayborne's boat and men, it would seem, were taken; and as Thomas Smith, "gentleman," was probably the next in command, or principal person, after the death of Warren, he was afterwards tried for the offence by the assembly, as will presently be further noticed. Clayborne before this had fled for refuge to Virginia, and commissioners were sent by the governor of Maryland to the governor of Virginia, (Harvey,) to reclaim him as a criminal against the laws of Maryland; but Harvey thought it proper to send Clayborne, with the witnesses to England.‡

In this situation of constant danger from the savages, and actual warfare with their own countrymen, it could not be expected that the colonists had as yet, in a little more than a year from their first landing, extended their settlements beyond their small town at St. Mary's. The lord proprietor, however, had not forgotten to make arrangements for a more dispersed occupation of the country. There is strong evidence to presume, that written propositions or "conditions," upon which the colonists were to emigrate, had been propounded to them before their departure from England; but, as these are not now to be found

CHAP. I.
1635.
The lord proprietor's instructions relative to grants of lands.

1636.

* There were two indictments found before a county court held at St. Mary's on the 12th of February, 1637, (old style,) upon which Thomas Smith, and others of Clayborne's men, appear to have been arraigned and tried by the assembly. In one of which indictments the offence is stated to have been committed, "in the river Pocomoque, on the eastern shore, on the 23d of April, in the year 1635." In the other indictment, the offence is laid or stated to have been committed "in the harbour of great Wiggomoco, in the bay of Chesapeake, on the 10th day of May, in the year of our Lord 1635." Whether there were two distinct engagements between the two parties does not appear certain. The murder of William Ashmore, one of Cornwallis's men, seems to be the gist of the offence in both indictments. From which it might be inferred, that there was only one battle; and Clayborne, in his subsequent petition to his majesty, mentions but one engagement.

† It is proper to mention here, that Clayborne, in his petition, alleged that Cornwallis and his men fired first on his boat; and that they had taken his pinnaces and boats, and still detained them.—See his petition hereafter stated.

‡ Burk's Hist. of Virg. vol. 2, p. 41.—As an appendix to the preceding events of 1635, see note (V.) at the end of this volume.

CHAP. I. among the records of the province, it is probable, that the instrument of writing, containing them, was either among those
 1636. lost or embezzled by Ingle or Clayborne, as before mentioned, or it was never placed on any record on this side of the Atlantic. Be that as it may, his lordship, in the year 1636, considered it proper to send to his brother, the governor, or as he is therein styled,—"his lieutenant-general of the province of Maryland,"—"instructions, relative to grants of land, to be made to the several colonists or "adventurers" as they are therein termed, "for the planting of his province of Maryland." As this instrument of writing* contains the outlines of his lordship's plan for parcelling out the lands of this province, in pursuance of his charter, and therein developes the mode of colonization subsequently pursued by him, it will be proper here to exhibit a copy of it to the reader.

"To our dear brother Leonard Calvert, esqr., and our lieutenant-general of the province of Maryland, or to any other our lieutenant-general there for the time being.

"Whereas the adventurers to plant that our province of Maryland have made suit unto us, that we would be pleased to grant unto them under our great seal of our said province such proportions and quantities of land there upon such considerations and agreements *as we have heretofore propounded and promised* to grant the same unto all such adventurers;† forasmuch as we are bound in honour really to perform the same in all points, these are, therefore, to will and authorize you, that presently upon receipt hereof you make or cause to be made under our great seal of that our said province unto every first adventurer for every five men aged between sixteen and fifty years, which such adventurer did bring into our said province to inhabitt and plant there in the year of our Lord 1633, and unto his heirs for ever, a grant of two thousand acres of land of English measure, for the yearly rent of 400*lb.* of good wheat, and to every adventurer which in that year did bring a less number than five men into that our said province of the ages aforesaid to inhabitt and plant

How lands were to be granted to the first adventurers in 1633.

* It is by some called "conditions of plantation;" and similar documents, to be found among the records, issued from time to time, have been generally so denominated; but "instructions"—is the appellation given them on this occasion in the provincial records; see "Council proceedings from 1636 to 1657," p. 1.

† This seems to raise a strong presumption, that "conditions of plantation" or terms of emigration, either oral or written, most probably the latter, had been "propounded" by the lord proprietor to the adventurers in 1633, before their embarkation, when the first colonists left England.

there and unto his heirs for ever a grant of one hundred acres of land of like measure for himself, and one hundred acres more for his wife, (if he brought any,) and for and in respect to every servant, and fifty acres for every child under the age of sixteen years, for the rent of 10*lb.* of wheat yearly for every fifty acres. CHAP. I.
1636.

“And to every other adventurer which hath adventured to transport men into our said province of the age aforesaid in the years of our Lord 1634 and 1635, for every ten men which such adventurer did bring into our said province in either of the said years, and to his heirs for ever a grant of two thousand acres of land of the like measure for the yearly rent of 600*lb.* weight of good wheat, and to every other adventurer which in either of the said years did bring a less number than ten men as aforesaid, and to his heirs forever, a grant of one hundred acres of land (of like measure) for himself, and one hundred acres for his wife, (if he brought any,) and for and in respect of every such servant one hundred acres, and for every child under the age of sixteen years fifty acres, for the yearly rent of 70*lb.* weight of wheat for every fifty acres. How to the
adventur-
ers of 1634
and 1635.

“And to every other adventurer which hath adventured to plant and transport any men into our said province, since the year of our Lord 1635, or which at any time hereafter shall transport any men of the age aforesaid, to inhabit and plant there until some other or further *conditions of plantation* shall by us be propounded and published to adventurers, and an authentic copy of such conditions by us signed and transmitted into our said province for every five men which he or they shall so transport thither, and to his or her heirs for ever, a grant of one thousand acres of English measure for the yearly rent of twenty shillings to be paid in the commodities of the country, for every such thousand acres, and to every other adventurer which within the time next aforementioned, hath or shall transport any number of persons less than five a grant of one hundred acres of land for him or herself, and one hundred more for and in respect of his wife, (if he brought any,) and as much for and in respect of every man servant, and fifty acres more for and in respect of every child under the age of sixteen years, and for in respect of every maid under the age of forty years which he or she hath or shall so transport thither, and to his or her heirs for ever, for the yearly rent of twelve pence for every fifty acres. How to all
others after
the year
1635.

“And we do further will and authorize you, that every two

CHAP. I. thousand acres, and every three thousand acres, and every one
 1636. thousand acres of land so to be passed or granted as aforesaid
 Manors of unto any adventurer or adventurers, be erected, and created into
 1, 2, and a manor to be called by such name as the adventurer or adven-
 3,000 acres to be erect- turers shall desire.
 ed.

Courts-
 Leet and
 Courts-
 Baron.

“And we do hereby further authorize you, that you cause to be granted unto every of the said adventurers within every of their said manors respectively, and to his or their heirs a court-baron and court-leet, to be from time to time held within every such manor respectively. And to the end you may the better be informed in what manner to pass every such grant, court and courts as aforesaid, according to our intention, We have sent unto you under our hand and seal a draught of a grant of a manor court-leet and court-baron, and a grant of a freehold, which precedents you are to follow, changing only the adventurers’ names, the rents and conditions of plantation as the case shall require; for doing whereof this shall be your sufficient warrant. So we bid you heartily farewell. Given at Portsmouth, the eighth of August, 1636. Signed C. BALTIMORE.”*

It will readily be perceived, that these instructions, or conditions of plantation, were well calculated to induce men of some property in England, who were able to bear the expense of transporting servants and dependents, to emigrate to this province. It is true, that it was sketching out aristocratic features in the future government of the province, which in other times, might have been supposed to operate in discouragement of emigration. But, it is to be remembered, that the colonists, for whom Maryland was formed as an asylum, being Catholic refugees, were accustomed to arrange themselves, according to the then politics of England, on the side of the supporters of the monarchy and aristocracy of the realm. This feudal mode of parcelling out lands by subinfeudation was not, therefore, so horrible to them, as may appear to us at this day.† “The age of chivalry” had not then quite past; and some faint remains of the reciprocal connexion between a lord and his vassals might still be discern-

* See the Provincial Records, entitled “Council Proceedings from 1636 to 1659,” p. 1.

† The feudal tenures then subsisted nearly in the same state as they are described in lord Coke’s Institutes, which were written and published but a few years prior to lord Baltimore’s charter of Maryland. The reader recollects, that the feudal tenures were not completely abolished, until within a few years after the restoration of Charles II. in 1660.

ed in the structure of society, sufficient to induce the dependents of a chief to brave with him the dangers of the ocean, the wilderness, and the savage. CHAP. I.
1636.

One circumstance, however, discernible in this plan of colonization, must attract approbation. The grants to the adventurers were to be, of an *indefeasible estate of inheritance in fee simple to them and their heirs for ever*. Security, in the absolute enjoyment of property, is the best corner-stone that can be laid in the foundation, which is to support the fabric of a free government. An humble feudal tenant, enfolded round with this rampart, might well consider his cottage as his castle; and might smile with regret at the delusion of even the well-meaning citizen, who delights in the uncertainty of revolutionary liberty.

In pursuance of these instructions, and correspondent also, with the charter, manors of lands were, in process of time, laid off in different parts of the province; and some of them appropriated or *reserved* for the lord proprietor's own particular use; others again were erected by the special orders of the lord proprietor, for the benefit of his relations or particular friends, with special conditions and privileges; and others also so denominated and granted to individuals, according to the terms of those instructions or conditions of plantation, as they so became entitled, for the transportation of colonists or settlers into the province. But, although the power and right of holding courts-baron and courts-leet, might have been inserted in some, or all of those grants of manors, yet we are told, from good authority, that no memorial appears on the records of the province, of any practical use of either of those kinds of courts.*

* So stated in Kilty's Landholder's Assistant, p. 93.—But I find in the "Council Proceedings from 1636 to 1657," p. 23, a commission there recorded, for holding a court-leet in the isle of Kent, directed "to Robert Philpot, William Cox, Thomas Allen, of the isle of Kent, gentlemen, to be justices of the peace within the said island, to hold a court-leet in all civil actions not exceeding 1200 lbs. tobacco; and to hear and determine *all offences criminal*, within the said island, which may be determined by any justice of the peace in England, not extending to the loss of life or member. Given at St. Mary's, February 9th, 1637. Witness, Leonard Calvert."—As proceedings, most probably, took place under this commission, there must, of consequence, have been some written memorials of those proceedings once existing, though probably now lost. As the business of courts-leet in England has long ago been gradually absorbed by the courts of quarter-sessions for the shire or county, so with us, it is probable, that if any courts-leet or courts-baron were ever held in the province, the county-courts, at a very early period, swallowed up their jurisdictions. To trace these transfers of judicial power, would at this day be unnecessary, if it was a possible task, except it be to throw some light upon the history of those times.

CHAP. I. As it would not have been safe, at this period of time, to have
 1636. commenced a scattered population of the country, it was very
 Grants of properly directed by his lordship, soon after the foregoing in-
 small lots structions, by letter, to his brother and lieutenant general, that
 in the town he should "pass in freehold, to every of the first adventurers that
 of St. Ma- shall claim or desire it, and to their heirs, ten acres of land with-
 ry's. in the plots assigned or to be assigned for the town and fields of
 St. Mary's, for every person that any of the said adventurers
 transported or brought into Maryland, according to their condi-
 tions first published, and five acres of land to every other ad-
 venturer for every other person which he hath or shall transport
 thither since that time of the first plantation until the thirteenth
 day of August which shall be in the year of our Lord 1638.—
 And for so doing this shall be your warrant. Given under my
 hand and seal at Warden Castle in the realm of England, the
 29th of August, 1636."*

The nature
 of the first
 form of go-
 vernment
 of the co-
 lony.

Although king Charles the first had, but a few years before he
 granted the charter of Maryland to lord Baltimore, dissolved his
 parliament, and had at that time formed the resolution, as some
 historians allege, of never calling another, and of governing
 without them, yet we find very strong provision made in that
 instrument of grant, for that important ingredient of a free go-
 vernment—a representative legislature. In the seventh section
 of that charter, the king "grants unto the said baron and to his
 heirs, *for the good and happy government of the said provinces*,
 free, full, and absolute power, to ordain, make, and enact laws,
 of what kind soever, according to their sound discretions, whe-
 ther relating to the public state of the said province, or the pri-
 vate utility of individuals, *of and with the advice, assent, and*
approbation of the freemen of the same province, or of the great-
 er part of them, *or of their delegates or deputies, whom we will,*
shall be called together for the framing of laws, when, and as
often as need shall require, by the aforesaid baron of Baltimore,
 and his heirs, and in the form which shall seem best to him or
 them, and the same to publish and duly to execute."

But in the eighth, or next section immediately following, a
 clause is inserted, which, by a latitude of construction, might
 possibly be interpreted to give powers repugnant to the mode of
 legislation prescribed or granted in the former. A reason for
 the clause is first given by way of preamble:—"and forasmuch

* Land Office Record Book, No. 1, folio 30.

as in the government of so great a province sudden accidents may frequently happen, to which it will be necessary to apply a remedy before the freeholders of the said province, their delegates, or deputies, can be called together, for the framing of laws; neither will it be fit, that so great a number of people should immediately on such emergent occasion, be called together; we therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors, do grant, unto the said now baron of Baltimore, and to his heirs, that he and they, by themselves or by their magistrates and officers, &c. *may and can make and constitute fit and wholesome ordinances*, from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do, or may affect. Which ordinances, we will to be inviolably observed within the said province, under the pains to be expressed in the same, *so that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England*: and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels."

This was entirely consonant to those unfortunate maxims, which Charles had adopted about this time, for the rules of his regal conduct. The indefensible principle, that his orders in council, and proclamations thereupon, should be deemed the legal and constitutional substitutes of laws, which ought to have been enacted by the three estates of the realm in parliament assembled, was the prominent rock on which his subsequent fortunes split. But it must be acknowledged, that qualified as this principle is, by the limitations at the end of the clause in this eighth section of the charter, it is difficult to conceive wherein a case could occur, in which an ordinance of the lord proprietor or his governor could possibly be made, so as not "to oblige, bind, charge, or take away the right or interest of some person or persons, of or in member, life, freehold, goods or chattels."

This leads us, however, to the notice of an instrument of writing, called in the body of it, "an ordinance," made by the lord Baltimore in England, in the early part of the year 1637, ^{An ordinance for that purpose.}

CHAP. I. (bearing date the 15th of April, 1637,) containing instructions to his brother Leonard Calvert, esq. for the regulation, government, and settlement of the province. But, as he therein constitutes and appoints him to fill several offices in the province, it would seem more properly to fall under the denomination of a *commission*;^{*} of which, the most remarkable part seems to be that which relates to the calling an assembly, to meet on the twenty-fifth day of January next ensuing, after the date of the said ordinance; for the purpose of signifying to them his lordship's *disassent* to some laws, which had been before that time enacted by them. These laws, thus to be rejected by him, were, most probably, those made at the assembly before mentioned, held on the 26th of February, 1634-5.† What these laws were, or what were his lordship's reasons for refusing his assent to them, we are not informed. It would seem at first, as if his lordship meant to contend for such a construction of the seventh section of the charter, as if it exclusively invested in him the right and power of first propounding the laws to the assembly, "for their advice, assent, and approbation," and that the assembly had no right or privilege of originating or framing laws. This subject, however, will be further explained, when we come to notice the proceedings of the assembly, which was directed to be called on the twenty-fifth of January.

Proclamation in England against emigration.

In the mean time, it will be necessary to mention some intervening incidents of the present year; among which a proclamation issued by king Charles, bearing date "the last day of April, 1637, against the disorderly transporting his majesty's subjects to the plantations within the parts of America," seems to claim some notice. By this proclamation, the officers of the several ports in England, Wales, and Berwick, were commanded not to permit any persons, being subsidy men, or of the value of subsidy men,‡ to embark for any of the plantations, *without leave*, from his majesty's commissioners for plantations,§ first had and obtained, nor any persons under the degree or value of subsidy

* See this commission at large in Note (VI.) at the end of this volume.

† The commission of April 15, 1637, (just referred to) expresses his lordship's "disassent to *all the laws* by them heretofore or at any time made;" which would have included the laws of any intermediate session, as in 1636, if any assembly had been held in the beginning of that year; but no vestige of any preceding session, except that of February 26th, 1634-5, appears.

‡ That is, men who were liable to pay the tax called a subsidy.

§ These seem to be commissioners mentioned in a "special commission to the lord archbishop of Canterbury and others," issued by the king some time in the

men, without an attestation or certificate from two justices of the peace, living next the place where the party lately then before dwelt, *that he hath taken the oaths of supremacy and allegiance*, and like testimony from the minister of his conversation and *conformity to the orders and discipline of the Church of England*; and that such officers should return to his majesty's said commissioners of plantations every half year a list of the names and qualities of all such persons, as shall from time to time be embarked in any of the said ports for any of the said plantations.* Although it is evident that this proclamation would affect the emigration of English Catholics to Maryland, if put in execution against them, yet it would seem, from the preamble to it, to have been principally intended to check the emigration of the puritans to New England, referring to the transportation of "many idle and refractory humours, whose only or principal end is to live as much as they can without the reach of authority." The Catholics were generally considered, by the court-party of that day, as peaceable and good subjects, but the Puritans were viewed in a very different light. Hence it is probable, that it never was enforced against the Catholics, or that they at all times could easily obtain a license to depart. But the civil wars now approaching, soon rendered it ineffectual even as to the Puritans.

It would appear also, that towards the latter end of this year the isle of Kent had been in some measure reduced to the obedience of the lord Baltimore. Clayborne had failed in his attempts to retain his possession of it by force, and had, as before observed, been sent by the governor of Virginia to England, to seek what remedy he might have there. Measures seem, therefore, now to have been taken to put in force the civil authority of the lord proprietor over that island, as a part of the province. Accordingly a commission was granted by governor Calvert to captain George Evelyn, of the following tenor,—“Leonard Calvert, governor of Maryland, to my good friend captain George Evelyn, of the isle commonly called Kent, within this province,

The isle of Kent reduced to lord Baltimore's government.

year 1634, vesting in them powers of government over all the English colonies already planted or to be planted, not only in political, but in ecclesiastical matters. It seems to have been styled, in common parlance, The Board of Lords Commissioners for Foreign Plantations. See it in the original Latin, in Hazard's Collections, vol. 1, p. 345, and in English in Hutchinson's Hist. of Massachusetts, vol. 1, appendix, No. IV.; but these two copies vary in the names of one or two of the commissioners, and somewhat also in the date of it.

* See the proclamation more at large in Hazard's Collections, vol. 1, p. 421.

CHAP. I. greeting: Whereas I am willing to provide for the good govern-
 1637. ment of the said isle of Kent, being of right a member of this province, therefore reposing especial confidence in the trust, wisdom, and well approved experience of you the said George Evelyn, I do, by these presents, authorise, constitute, and appoint you to be commander* of the said island and the inhabitants thereof, giving and granting hereby unto you full power and authority to elect and choose any six or more able and sufficient men, inhabitants of the said island, as you in your discretion shall think fit, with whom you shall advise and consult in all matters of importance, and to call a court or courts, as often as there shall be cause, and in the said courts to award all manner of process, hold pleas, and to hear and finally to determine all causes and actions whatsoever civil, happening and arising between any the inhabitants of the said island, not exceeding in damages or demands the value of ten pounds sterling; as also to hear and finally determine all matters and offences whatsoever criminal, happening and committed within the said island, which may be heard and determined by any justice of peace in England in their court of sessions, not extending to life or member; and I do further authorise you to do, use, and execute all and all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said island, as any justice of peace in England may or ought to do by virtue of his commission for the peace, and further to elect and appoint all necessary officers for the execution of justice and conservation of the peace there, with allowance of such fees as are usually belonging to the same or the like offices in Virginia; and to do all other things and acts which shall be necessary for the execution of the power and jurisdiction hereby committed unto you. Given at St. Mary's, this 30th day of December, Anno Dom. 1637."†

* The civil government of Maryland was in many instances copied from similar institutions which had been in practice and use in the elder colony of Virginia. It appears, that previous to the division of that province into counties, settlements, distant from James town, were erected into "corporations," as they were called, and officers appointed to preside over each "corporation" under the denomination of a "commander." See one of the laws, (or *articles* as they are called,) passed at the session of assembly in Virginia, held in 1624; stated in Burk's Hist. of Virg. vol. 1, p. 282.

† "Council proceedings from 1636 to 1657," p. 20. It may be here observed, that Evelyn must have been a man of some note in the province, as it appears from the land records thereof, that he was the owner at this time of "the manor of Evelinton in the baronie of St. Mary's." A manor could not be less than one thousand acres, according to his lordship's instructions of 1636, before mention-

The colonists, it seems, had now begun to extend their settlements beyond the limits of the town of St. Mary's. In a commission to Robert Vaughan, of St. George's Hundred, bearing date the 5th day of January, 1637, (1638, new style,) appointing him constable of the said hundred,* there is the following preamble to it,—“Whereas the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred, by the name of St. George's Hundred,” &c. The commission then specifies his powers as the constable of that hundred, nearly in the same manner as the like commission in England, prescribing their common-law duties; but moreover particularly enjoins him, to make diligent search and inquiry, for persons who furnish the Indians or savages with arms and ammunition.† To this same purpose, and for the illustration of other matters, a commission to Robert Wintour, esq., bearing date but a few months afterwards, may be here stated.—“Cecilius to our beloved *Counciller* Robert Wintour, esq. &c.‡ Whereas the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred by the name of St. George's Hundred, We willing to provide for the better conservation of the peace within the said hundred, &c., do constitute, &c. you to be a justice of our peace within the said hundred, &c. with such powers as belong to a justice of the peace in England, by virtue of his commission for the peace, and to make diligent inquiry after such as shall sell, or (without license) lend or deliver any gunpowder, or shot to any Indian, or that shall lodge or entertain in his house by night any Indian, without leave from us, &c.; and we authorize you to appoint a high constable for your hundred, to whom so appointed by you, we give all such powers, &c., as belong to a high constable of any hundred in England. Given at St. Mary's this last day of March, 1638.—Leonard Calvert.”§

CHAP. I.

1638.

The colonists begin to extend their settlements into the country.

ed. A “barony” is the Irish term for a hundred, (the civil division of a county,) as will appear hereafter.

* Although the office of constable is now by us, and might be then in England, considered to be an office below the dignity of a gentleman; yet in the then situation of the province, it might with propriety be estimated an office of honour. That Mr. Vaughan was then considered in the rank of a gentleman, we may infer from his subsequent promotions, particularly from his being made *commander* of the isle of Kent county, under governor Stone about the year 1650.

† Council proceedings from 1636 to 1657, p. 29.

‡ It would appear from this, that Mr. Wintour was at this time also a member of the governor's council; but when or how appointed no where appears on record.

§ Council proceedings from 1636 to 1657, p. 21.

CHAP. I. These commissions exhibit very early recognitions of the principle—that the first colonists of Maryland brought with them so much at least of the English common-law, as was applicable to their own situation and condition, and particularly those parts of that law, which were calculated to afford protection from the personal injuries of each other.

The county of St. Mary's organized.

As hundreds were the civil divisions of a county in England, we may infer, that all the parts of the country adjacent to the town of St. Mary's, inhabited by the colonists, were considered as forming a county, to which the name of St. Mary's was given; but whether any real limits were yet assigned and marked out as the boundaries of that county, does not appear. That a county was now so called, appears from a commission to John Lewger, esq. bearing date the 24th of January, 1637, (1638, new style,) appointing him conservator of the peace, *within the county of St. Mary's*, with such powers as are usually exercised and executed by any justice of peace in England, &c.* The same commission appoints him also, "commissioner in causes testamentary," to prove the last wills and testaments of persons deceased, and to grant letters of administration, &c. It is addressed to him in the following style,—“To our trusty councillor John Lewger, secretary of our province of Maryland.”† He had been appointed councillor and secretary by the commission of the 15th of April, 1637, before mentioned; in virtue of which office of *secretary*, it seems to have been the intent of that commission, to make him also, both principal clerk of the council and register of the land office. The same instrument appointed him also, “collector and receiver of all his lordship's rents, revenues, profits, and customs.” It appears from subsequent records of the province, that Mr. Lewger had been sent into the province from England, by the lord proprietor, as a man well qualified to assist his brother in the administration of the government. He arrived there on the 28th of November, 1637, with his wife and a son named John about nine years old, together with three maid servants, three men servants and a boy.‡

Mr. John Lewger.

* Also in the same book page 23, a commission to James Baldrige to be Sheriff and coroner “of St. Mary's county,” dated January 29, 1637.

† Ibid, p. 23.

‡ Taken from the oldest record book in the land office, viz. *Liber*, No. 1, p. 17.—In the same book, p. 19, mention is made of his importing in the same year, (1637,) twelve men and five women, who are not styled therein—servants. These importations of servants as well as others, entitled him to what were called “rights” to land, that is, so many acres for each person imported, as stated and described in the lord proprietor's instructions before mentioned. These

It would seem, therefore, that he was a man above the ordinary rank in society, both as to fortune and mental qualifications. CHAP. I. 1633.

In pursuance of the lord proprietor's instructions, before mentioned, of the 15th of April, 1637, for the holding an assembly, on the 25th of January next, the governor proceeded to some preparatory arrangements necessary thereto. Accordingly, about the first of January, 1637, (1638, new style,) he issued his warrant to captain Evelyn, commander of the isle of Kent, of the following tenor.—“Whereas my dear brother, the lord proprietor of this province, hath, by his commission to me directed, in that behalf, bearing date at London, in the realm of England, the 15th day of April, 1637, appointed a general assembly of all the freemen of this province, to be held at his town of St. Mary's, on the 25th of January next; these are therefore, in his lordship's name, to will and require you, all excuses set apart, to make your personal repair to the fort of St. Mary's, on the said 25th day of January, then and there to consult and advise of the affairs of this province; and further, to will and require you at some convenient time, when you shall think fit, within six days after the receipt hereof at the farthest, to assemble all the freemen inhabiting within any part of your jurisdiction, and then and there to publish and proclaim the said general assembly, and to endeavour to persuade such and so many of the said freemen as you shall think fit, to repair personally to the said assembly, at the time and place prefixed, and to give free power and liberty to all the rest of the said freemen, either to be present at the said assembly, if they so please, or otherwise to elect and nominate such and so many persons, as they or the major part of them, so assembled, shall agree upon, to be the deputies or burgesses for the said freemen, in their name and stead, to advise and consult of such things as shall be brought into deliberation in the said assembly; and to enter all the several votes and suffrages upon record, and the record thereof, and whatsoever you shall do in any of the premises, to bring along with you, and exhibit it at the day and place prefixed, to the secretary of the province for the time being; and for so doing, this shall be your warrant.”*

An assembly of the province called.

particulars, relative to Mr. Lewger, exhibit the early mode of colonising the province.

* See “Assembly Proceedings from 1637 to 1658,” p. 1.—In this part of this history, heretofore published, the author had here subjoined a note, in which he thought himself warranted, from legal authorities as well as from the obvious

CHAP. I.

1638.

It is not easy to determine, whether the isle of Kent was at this time considered as a county by itself, or a distinct territorial government, within the lord Baltimore's jurisdiction, subordinate to the general government of the province. From the circumstance of captain Evelyn's having a council assigned him of six persons, as mentioned in his commission, before stated, of the 30th of December, 1637, it would seem to be of the latter.* However that was, yet it seems, that at this time any *freeman* thereof had liberty to repair in person to the assembly, and to be considered as a member thereof. Although the alternative was given to them, by the foregoing warrant, of meeting together and electing representatives to serve in the assembly, as at this day,† yet it would appear from the proceedings of this assembly, that the practical construction of the foregoing warrant was, that every freeman, who did not chose to attend himself, might depute some one, who did attend as a member, to vote for him as his *proxy*, in the manner of the house of lords in England.‡

construction of the seventh and eighth sections of the charter of Maryland, to advance an opinion, that the word—"Freemen," so often used in the early legislative proceedings of the province, as well as in the charter, was therein meant as being synonymous to the word—*freeholder*. He has since, however, met with a case, which occurred in the proceedings of an assembly of the province held in September, 1642, in which the question seems to have been otherwise decided by the assembly. It is thus stated on the journal.—"Mr. Thomas Weston being called, pleaded he was no *freeman*, because he had no land nor certain dwelling house, here, &c.; but, being put to the question, it was voted, that he was a *freeman*, and as such bound to his appearance by himself or proxy; whereupon he took place in the house."—(This legislative proceeding will be further noticed in its proper place.) A passage in *Beverly's Hist. of Virg.* p. 233, (published in 1722,) seems also to indicate a different construction, especially as the usages of Virginia were much adopted by her younger sister colony.—"Every *freeman*," says he, (by which denomination they call *all but indentured or bought servants*,) from sixteen to sixty years of age, is listed in the militia."—Yet the same historian, in the same work, (p. 206,) where he treats of the election of burgesses, states that,—"*the freeholders* are the only electors;" as they are well known to be even to this day. The subject, therefore, seems to be involved in some doubt and obscurity, and the reader is to exercise his own judgment.

* But, by one of the bills of this session of 1638-9, (No. 13, Bacon's Laws,) it was to be erected into a hundred, and called Kent-Hundred, which hundred was to be considered as being *within the county of St. Mary's*, until another county should be erected on the eastern shore.

† This alternative seems to be authorised also by the seventh section of the charter of Maryland.

‡ The principle upon which the right of making a proxy prevails in the house of lords and not in the house of commons is said to be, that the lords are supposed to sit in parliament in their own personal rights, and not as delegates or

The assembly accordingly met on the 25th day of January, 1637, (1638, new style.) The lieutenant general, (or governor,) appears to have taken the chair as speaker thereof, and the three gentlemen who composed his council, to wit, Jerome Hawley, Thomas Cornwaleys, and John Lewger, esqrs. set with the others as individual members only, and not as constituting an upper house, as the council afterwards did, but in the manner in which it is said the parliament in Scotland usually sat prior to the union, lords and commons in one room or chamber.* The commander of the isle of Kent, (Evelyn,) also took his seat as a member. In the list of the members some of whom are styled gentlemen and some planters, the *hundreds* from which they came, are annexed to their respective names. It would appear, that some of the members sat as burgesses or representatives from hundreds; others claimed and held seats in their own personal rights as freemen, and so far constituting, what is by some required to constitute, a true and real democracy, or an assemblage of all the free citizens of the State to make laws for themselves. It is true, that all the freemen of the province did not on this occasion attend; but it appears, that such as did not attend, either voted for some person in his hundred as a burgess or representative thereof, or authorized some member, as his proxy, to vote for him.† Although *writs of summons*, it seems,

1638.
The second assembly of the province meet.

deputies of others, as the commons do. And therefore, as a commoner in parliament was only a proxy or representative of another, he could not constitute a proxy in his place, according to an ancient maxim of law, *delegata potestas non potest delegari*, 4 *Inst.* 12, 1 *Bac. Abr.* 582.—So allowing every freeman in Maryland to have a seat in the assembly, sitting there in his own personal right, he might make a proxy upon the same principle as a lord in England.

* Hume's Hist. ch. LV.—It appears that the parliaments of England, in the time of Edward the first, were also composed of one house only, the lords and commons sitting together.—See 2 *Inst.* 267.

† As the customs of Virginia were closely copied by the colonists of Maryland, a reference to the usages of the former colony is sometimes necessary to illustrate those of the latter.—According to *Burk's* statement, (see his Hist. of Virg. vol. 1, p. 203,) which he professes to take from the "Instructions" sent from the Virginia Company in England to Sir F. Wyat, (governor of Virginia, in 1621,) the first representative body, which ever sat in Virginia, (according to *Stith* in the year 1619, but according to *Beverly* in 1620,) consisted of "two burgesses, chosen for every town, hundred, and plantation," (the word *plantation* here must mean a cluster of families seated in separate houses near to each other,) "by the inhabitants, to decide conjointly with the governor and council, by the greatest majority of voices on all matters of concern relating to the colony."—On the subject of this first introduction of a provincial legislature into Virginia, *Chalmers*, (in his Annals, ch. III.) who states it to have been in June, 1619, further remarks:—"The colony had been divided only into seven hun-

CHAP. I. had been issued to every freeman, individually, to attend, yet
 1638. one of the first acts of the proceedings of the assembly, on the first day of their meeting, was to cause proclamation to be made, "that all freemen omitted in the writs of summons, that would claim a voice in the general assembly, should come and make their claim."

"Whereupon claim was made by John Robinson, carpenter, and was admitted."

A list was made of such freemen as were absent, and of the names of those members who attended and were *proxies* for such absentees; among which members, the three gentlemen who were councillors appear to have had the greatest number of delegations.*

The house then proceeded to establish rules and orders to be observed during their session; the substance of which was as follows:

"Imprimis—The lieutenant general, as president of the assembly, shall appoint and direct all things that concern form and decency, to be observed in the same; and shall command the observance thereof, as he shall see cause, upon pain of imprisonment or fine, as the house shall adjudge.

"Item—Every one that is to speak to any matter shall stand up, and be uncovered, and direct his speech to the lieutenant general, as president of the assembly; and if two or more stand up to speak together, the lieutenant general shall appoint which shall speak.

"Item—No man shall stand up to speak to any matter, until

dreds or distinct settlements, which seem to have enjoyed some of the privileges of boroughs: and from this circumstance the democratic branch of the assembly has been called, to this day, the house of burgesses, though composed almost entirely of the representatives, of counties. To these Yeardley, the governor, in pursuance of his instructions from the company, issued writs for the election of delegates. The assembly, formed of the governor, the council, the deputies, then met together, in one apartment, and transacted affairs like the parliament of Scotland of old, which mode continued unchanged till a period subsequent to the restoration. The laws, which were then enacted, and which do not now exist, were transmitted to England for the approbation of the treasurer and company, without whose confirmation they were of no validity."

* The journal does not specify how such delegated authority to a *proxy* should be verified, but we may suppose it to have been by the production to the house of some written instrument, in the nature of a warrant of attorney. Although it is said, (Cunningh. Law Dict. verb. *proxy*), that a peer of the realm must enter his proxy in *person*, on the journal of the house of lords; yet from the case that occurred in 1 *Eliz.* (as stated by lord Coke, 4 *Inst.* 12,) it might be done by an instrument of writing for that purpose.

the party that spoke last before, have sat down; nor shall any one speak above once to one bill or matter at one reading, nor shall refute the speech of any other with any reviling or contentious terms, nor shall name him but by some circumlocution; and if any one offend to the contrary, the lieutenant general shall command him to silence. CHAP. I.
1633.

“Item—The house shall sit every day at eight o’clock in the morning and at two o’clock in the afternoon.*

“Item—The freemen assembled at any time, to any number above ten persons, at the hours aforesaid, or within one hour after, shall be a house to all purposes.

“Item—Every one, propounding any matter to the house, shall digest it at first into writing, and deliver it to the secretary,† to be read unto the house.

“And it was ordered by the house, that these orders should be set up in some public place of the house, to the end all might take notice of them.”

The house met again on the next day, the 26th of January, at eight o’clock, according to regulation. Several persons came in, and “claimed their voices as freemen;” of which the following entries on the journal of the house appear to be the most remarkable :

“Then came Edward Bateman, of St. Mary’s hundred, ship carpenter, and claimed a voice as freeman, and made Mr. John Lewger, secretary, his proxy.”‡

Also, “came John Langford, of the isle of Kent, gentleman, high constable of the said island, who had given a voice in the choice of Robert Philpot, gentleman, to be one of the burgesses for the freemen of that island, and desired to revoke his voice, and to be personally put in the assembly, and was admitted.”

The house then proceeded to the most important business of their session, the consideration of the laws transmitted to the colony by the lord proprietor. The draughts of the twelve first The assembly
take into
considera-

* According to lord Clarendon, (Hist. of the Rebellion, folio edit. p. 44,) the parliament hours about this period of time were, “for the house to meet always at eight o’clock, and rise at twelve, that the committees, upon whom the greatest burden of the business lay, might have the afternoons, for their preparation and dispatch.”

† From this we may infer, that the secretary of the province, Mr. Lewger, acted as clerk of this assembly, notwithstanding he was a councillor, and held moreover several other offices, and besides voted as a member of the house.

‡ This seems consonant to the practice of the house of lords in England, where a proxy must be made in the house *in person*, as before mentioned.

CHAP. I. acts of them being read, they "were severally debated by the
 1638. house." An adjournment then took place until three o'clock in
 tion the the afternoon; but nothing further of importance appears on the
 laws sent journal, to have been transacted on that day.
 in by the proprietor.

On the meeting of the house on the third day of their session, (the 29th of January,) an extraordinary question seems to have been agitated. It thus appears on the journal: "Upon occasion of some *warrants* granted out against some freemen that had made proxies, a question was moved in the house, whether freemen having made proxies during the assembly might be arrested before the assembly were dissolved; and captain Cornwaleys and James Baldrige were of opinion that they might, but the rest of the house generally concurred, that after the writs issued for summoning the assembly, no man having right to repair unto the assembly might be arrested until a convenient space of time after the dissolution of the said assembly, for their repair home."

There is considerable difficulty in ascertaining correctly the true import of the word "*warrants*"—used in the preceding paragraph. In its original, technical, and legal sense, at the period of the common law of England when it was used as above, it was confined to *criminal* cases only. Justices of peace in England, whose precept only was termed a *warrant*, had not, at that time, jurisdiction in any *civil* case, even in the recovery of *small debts*, which were then recoverable only, when under forty shillings, in the ancient county and hundred courts, or courts-baron.* It appears also, from the before mentioned commission to capt. Evelyn,† that he, being made *commander* of the isle of Kent, was, together with his council, to call a court or courts on the isle of Kent, "and in the said courts to hold pleas in *civil* cases not exceeding £10 sterling;" which seems to imply, that justices of peace had in the said island no jurisdiction in the recovery of debts, and *warrants* therefore were not the proper process in such cases. In like manner, we may suppose, the county court of St. Mary's, which was at this time held before the governor himself, (occasionally calling his council to his aid, as it would appear, in virtue of the lord Baltimore's commission before mentioned of 1637, was, "to hear and determine all *civil* causes," whatever their amount might be. If such was then the mode of recovering *small debts* throughout the province, these several courts, thus held before the governor and commander re-

* 3 Bl. Com. 33, 82.

† Ante, p. 43.

spectively, most probably proceeded by common law process in CHAP. I.
civil cases, to wit, by the writ or precept to the sheriff called a 1638.
capias. From this it might be inferred, that the arrests by *warrant*, alluded to in the journal, must have been in virtue of *criminal* process issued by some person acting as a justice of the peace. But, in answer to this, it is to be observed, that, even at this time in England, no privilege of parliament was allowed to exempt even peers of the realm, and certainly not members of the house of commons, from arrests by *criminal* process or *warrant*, in either treason, felony, or breach of the peace, or where surety of the peace was required.* Perhaps, indeed, privilege might have been claimed at this time in the province against arrests upon warrants for petty misdemeanors, or in cases for the recovery of forfeitures on penal laws, cognizable before a single justice. As no copies of any laws now exist, prior to this present session, nor even of this session, except their titles, this part of our subject must for ever remain in doubt. But the generality of the expressions in the preceding paragraph of the journal, relative to *privilege*, seems to imply, that they spoke of privilege where it was clearly allowable according to parliamentary usage; and therefore most probably intended it in relation to *civil* cases only. The usage of Virginia, the parent colony of Maryland, comes strongly in aid of this construction. Among the first laws now upon record in Virginia, and which were passed at a session of assembly in the year 1624, (it being the third assembly or session ever held in Virginia,) it was enacted,—“That no burgess of the general assembly should be arrested during the sitting of the assembly, and a week before and a week after, upon pain of the *creditor's* forfeiting his *debt*, and such punishment upon the officer as the court should award.”†

* The law of parliament is thus stated by lord *Coke*, (4 Inst. 25,) who wrote but a few years prior to the emigration of the first Maryland colonists.—“Generally the privilege of parliament holds, unlesse it be three cases, viz: treason, felony and the peace.” The words—“the peace,” were construed by chief justice Pratt, (afterwards lord Camden,) in the remarkable case of *Wilkes*, in the year 1763, to mean cases amounting to a *breach of the peace*, or where surety of the peace might be required. (See 2 Wils. Rep. 159.) But Mr. Justice Blakstone was of opinion, (in his Commentaries, vol. 1, p. 166,) that the *exception* from privilege extended to all *indictable crimes*; and in support of it cites several resolutions of the house of commons, particularly the same case just mentioned of *Wilkes*, with the lords’ protest thereon. (For which see the Ann. Reg. for 1764, p. 172.) However, the *exception* to the general privilege of parliament seems clearly to have prevailed, at the time of the first emigration of our colonists, as far as stated in the text above.

† Burk’s Hist. of Virg. vol. 1, p. 282.

CHAP. I. This declaration of their privilege by the Virginia assembly
1638. clearly alludes to *civil* cases only; and, notwithstanding the inference to be drawn from the jurisdiction of the Maryland courts, as before stated, we must suppose, that either the Maryland justices of peace had cognizance of some cases, where a *warrant* was the proper process, or that the process of the before mentioned courts in *civil* cases was, through some slight error, so termed.

If the privilege, here contended for by our Maryland assembly, was meant to extend to a freeman while he was actually on his way to the assembly, either to take his seat therein, or even to revoke a proxy before made by him, the decision of the house must be allowed to have been proper enough: for, by the law of parliament, the appearance of a peer in the house of lords, cancels any proxy before made by him;* but, if he was to be privileged from arrests even in *civil* cases, while he was about his ordinary business at home, and at the same time represented by his proxy, whom he had appointed, or burgess for whom he had voted, it does not appear to have been consonant to any principle of sound policy.

It seems somewhat remarkable to us at this day, that our ancestors, in such an early state of their colonization, should have had occasion to stickle so much for a privilege, generally esteemed odious even under governments where personal liberty is most strongly cherished. As the habit of contracting debts without the means of payment, is generally supposed to originate from an excess of luxury in living, it is difficult to account for the frequency of arrests for debts, which must be supposed to have existed at this time among the colonists, so as to make their legislative interference a subject of anxiety among them. Just settled in a wilderness, where few temptations to extravagant expenses could exist, we should have supposed that habits of economy would have become almost unavoidable.

The house now proceeded to take into consideration again, the laws sent by the lord proprietor as before mentioned. Three questions on the subject appear to have been proposed in the house: first, whether the laws should be now read again in the house; or, secondly, whether they should be put to the vote immediately, without further reading; or, thirdly, whether they should not be postponed to a future day, when a greater number of members might attend.

* 4 Inst. 13.

"Captain Cornwaleys gave his opinion, that they should expect a more frequent house;" that is, that the business should be postponed until a greater number of members attended. CHAP. I.
1638.

"Captain Fleete* gave his opinion, that they should be read again;" but seemed to coincide with the opinion of captain Cornwaleys, of postponing the subject to a future day.

The previous question, however, was put; whether the laws "should be now put to vote immediately," or not. It was carried in the affirmative by thirty-three voices to eighteen, both sides including proxies.

"Then were the laws put to the question, whether they should be received as laws, or not."

"Affirmed by the president and Mr. Lewger, who counted by proxies fourteen voices."

"Denied by all the rest of the assembly, being thirty-seven voices," including as we may suppose, their proxies. The laws
sent re-
jected.

Thus it would seem, that governor Calvert and Mr. Lewger, the secretary, were the only two members of the assembly who were for receiving the laws sent in by the lord proprietary; for although they counted twelve other votes besides their own, on the same side, that is, fourteen voices, yet as those freemen for whom they voted as proxies might not have voted in the same way, had they been present, the fourteen voices cannot fairly be counted, in forming an estimate of the real opinions of the freemen of the province. Neither can all the thirty-seven voices in the negative be taken in for the same reason; but, we may suppose, that a much less proportion of those thirty-seven voices were proxies, than on the other side; since by the rules and orders of the house before mentioned, ten members at least were necessary to constitute a house, and in that case there must have been eight members at least in the negative, who voted in their own rights, to two in the affirmative.† The grounds and reasons of their objections to these laws do not appear on the jour-

* It is probable, that this was the same captain Henry Fleete before mentioned, (p. 28,) who was found by governor Calvert, living at Piscataway among the Indians, where he had been for some years before the arrival of the colony.

† The improper effect, of an unlimited right in a member to receive proxies, is here perceptible; and seems to justify an order of the English house of lords, not long before this, (in the year 1626,) that, "for the future no lord should be capable of receiving above two proxies."—This order was occasioned by an excessive number of proxies obtained in the house at that time by the notorious duke of Buckingham.—See Rapin's Hist. (Tindal's edit.) vol. 8, p. 368, and Hume's Hist. ch. 50.

CHAP. I. nal; but certain it is, that a very warm opposition, among a large
 1638. majority of the freemen, was made to their reception; at the head of which opposition captain Cornwaleys may, from all appearances, be considered as having taken his stand. Neither are we able at this day to judge of the merit or demerit of those laws sent in by the proprietary, by a perusal of them, as no copies of them are to be found on our records.* Did the duty of an historian allow him to mention his conjectures, a plausible supposition might be made, that the dispute about the reception of these laws was dictated more by a political contest for the right of propounding laws to be enacted by the assembly than any other cause. From the good character which Cecilius, lord Baltimore always bore, we cannot suppose that he had framed or proposed any laws for the colonists, but such as he deemed the best in his own opinion, for the promotion of their welfare, with which his own interest at this early period of the province must have been necessarily involved, and for the prosperity of which he must have felt the sincerest solicitude. It is observable, also, that no specific objections to any particular law or laws of those sent in by the lord proprietor, were made, but the opposition to their reception seems to have been founded solely on his assumption of the right of propounding them. We may suppose on the other hand, also, that his rejection of the laws, said to have been made by the colonists in 1635, before mentioned, was founded on this disputable right.† So that in the very infancy of the settlement, the contest for the right of propounding laws was likely to result in placing the colonists in that most dangerous situation of society, of living under a government without any known laws. The house of assembly, convened at this time, seemed to be sensible of this. We accordingly find, therefore, on the journal of the house the following entries, immediately succeeding those of the rejection of the laws, just mentioned.

How far
the laws of
England
were
deemed to
be in
force.

“Then question being moved, what laws the province shall be governed by, it was said by some, that they might do well to agree upon some laws till we could hear from England again.

“The president denying any such power to be in the house, captain Cornwaleys propounded the laws of England, the president acknowledges that his commission gave him power in civil causes to proceed by the laws of England, and in criminal causes, likewise, not extending to life or member, but in those

* Bacon's Laws of Maryland, anno 1637.

† See note (VII.) at the end of this volume.

he was limited to the laws of the province; there could be no punishment inflicted on any enormous offenders by the refusal of these laws.”

CHAP. I.
1638..

“Whereupon the commission was produced and examined, and upon the reading of it, it appeared that there was no power in the province to punish any offence deserving the loss of life of member, for want of laws.”*

“To this they answered, such enormous offences would hardly be committed without mutiny, and then it might be punished by martial law.”

The house at this period of the business appear to have adjourned for dinner, but met again in the afternoon of the same day, when it was moved, “that the house would consider of some laws to be sent to the lord proprietor.”

“And the president advised, that they should choose some committees† to prepare the draught of them, and then the house might meet for confirming them; and in the mean time, every one might follow their other occasions.”

“So it being put to the vote, how many committees should be appointed for that purpose, they agreed that five should be chosen.” And five were accordingly chosen.

“It was then considered, for how long to adjourn the house, and it was thought fit to adjourn till the eighth of February following.”

“And because the court was to be held in the mean time, that is to say, on the third of February, that therefore the privilege of parliament should be void until the court were past, and all freemen might be arrested, as if no assembly were. And so the house broke up.”

The interval of ten days, for the committee to prepare the draughts of new laws, being elapsed, the assembly met again on

* The commission here alluded to, was most probably that sent in to the governor, bearing date the 15th of April, 1637, before mentioned, by which the governor and council were authorised, “where the *life, member, or freehold* of any person should happen to come in question, to inquire and determine according to the laws of our said province, and finally to give sentence and judgment thereupon, and to award execution accordingly.” The difficulty appeared to be, that according to the commission they could not proceed against offenders, in capital criminal cases, by the laws of England, but by their own particular local laws of the province; from whence it followed, that if there were no laws of the province, there could be no proceedings in such cases.

† It appears from subsequent proceedings of the house, that the word “committees,” here meant the members composing a committee. It was a phraseology in use at that time. See Hazard’s Collections, vol. 1, p. 410, 428.

CHAP. I. the eighth of February, according to their adjournment. The

1638. committee, it seems, had, during this interval, prepared a new set of laws to be enacted by the assembly, and to be sent to the lord proprietary; but it appears also, that upon consultation during this short recess, it was thought proper to propose again the laws sent in by the lord proprietary.

The laws
sent in by
the lord
proprietor
again pro-
posed.

"The committee reported to the house that they thought fit to read the former draught of laws again, and to put them to the vote the second time, in regard there was found a great deal of misunderstanding of them among the freemen, which made them to refuse them.

"And it being put to the vote of the house, whether they should be read again, or not, was affirmed by forty-eight voices, and denied by twenty-one voices.

"Then was an order made, by general consent of the house, that all bills propounded to the house for laws, should be read three times, on three several days, before they should be put to the vote."

"Then was the draught of laws read through the second time, and twenty bills propounded by the committee, were read the first time.*

"Captain Cornwaleys desired it might be put to the vote of the house, whether these laws† at the third reading, should be voted severally, or the whole body of them together.

"And that they should be voted altogether, was affirmed by thirty-two voices, and denied by thirty-seven."

The house upon this adjourned, (probably for dinner,) and met again in the afternoon of the same day. It is proper here to observe, that the inference to be drawn from this last vote of the house is, that the "misunderstanding," before mentioned, "among the freemen," relative to the laws proposed by the proprietor, was, that although they had previously rejected them altogether in a body by one vote, yet they did so, to manifest their displeasure at that mode of legislation; but were willing to affirm or admit any of them "severally," when brought before the house in a constitutional way, as they apprehended, by a committee appointed for that purpose. This inference is strengthened by two circumstances; one of which is, that no

* "The draught of laws read through the second time," must have been the laws sent in by the proprietor; and the "twenty bills," those proposed by the committee.

† Viz. those sent in by the lord proprietor.

further proposition or vote, relative to the laws sent in by the lord proprietor, appears on the journal, and the other, that in the course of their meeting in the afternoon they appointed a committee for "preparing laws" against the next meeting of the house; some of which laws might possibly be the same as those sent in by the lord proprietor. CHAP. I.
1638.

"The house being sat, the president declared that he thought it fitting to adjourn the house for a longer time, till the laws, which they would propound to the lord proprietor, were made ready, which some would take care of, and in the meantime the company might attend their other business.

"Captain Cornwaleys replied, they could not spend their time in any business better than in this for the country's good; and one of the planters demanded the reason why it should be adjourned, and said they were willing to leave their other business, to attend to it. The president replied, he would be accountable to no man for his adjourning of it.

"Then captain Cornwaleys moved, that at least a committee might be appointed, that should take charge of preparing the laws till the house met again; and it being put to the house, they agreed that three committees* should be appointed. Then every one nominating severally his three committees, the president had forty-six voices, captain Cornwaleys had fifty-six, captain Evelyn forty-four, Mr. Lewger thirty-one, Mr. Snow five, and captain Fleete four.

"Then it was ordered, that privilege of parliament-men for their persons, should not be allowed till the next meeting of the assembly.

"Then the president adjourned the house till the twenty-sixth day of February."

From what fell from captain Cornwaleys, in the foregoing proceedings, in his proposition for adopting the laws of England, it might be inferred, that the laws of England had never yet been put in practice among the colonists, although full three years had elapsed since their first settlement at St. Mary's. It must be confessed, that this observation of his, cannot at this day be easily accounted for, since it is certain, that the earliest records of the province seem all to indicate, that the whole of their proceedings, both legislative and judicial, were conducted according to those laws, except, as observed in the house of

* Three members of a committee, as before.

CHAP. I. assembly, "where life or member was to be affected." Indeed, 1633. the subject that so often occurs on the little journal of the house, before quoted, as to "privilege of parliament," in exempting the members of the house from arrest, presupposes the common law of England as to this purpose in force; for, if there were no local *laws of the province*, nor any *common law*, from whence could this privilege arise? We are, therefore, to construe Mr. Cornwaleys' proposition to this effect: that the laws of England, so far as they were applicable to the local circumstances of the colonists, were *to be continued* to be used and practised by them; and that a legislative *declaration* to that purpose should be made.

Courts of
justice
held.

In confirmation of this construction of the foregoing proposition, we are to observe, that in a few days after the assembly rose, courts of justice were held at St. Mary's, in which the proceedings appear to have been in exact conformity to those laws. A court "for testamentary causes," composed of the governor and council, was held on the 12th of February; in which letters of administration were granted on the estates of divers deceased persons, and proceedings had, as in the same kind of courts in England. On the same, or succeeding day, a court, called in the records, a *county court*, was holden before the lieutenant general, captain Robert Winton, and Mr. John Lewger; at which a grand jury was impanelled and sworn, and two bills of indictment for piracy and murder were sent up to them, and found true bills. These indictments appear to have been drawn according to English precedents, and the technical phraseology used in them according to the established practice of the criminal laws of England. As these indictments, which have been before alluded to, related to those political incidents of the province occasioned by Clayborne's resistance to the lord proprietor's right and authority over the isle of Kent, some more particular notice of them will be necessary.

Proceed-
ings there-
in against
Clay-
borne's
party.

The first of these indictments charges:—"Let inquest be made for the lord proprietor, if in the river Pocomoque, on the eastern shore, on the twenty-third day of April, in the year 1635, Thomas Cornwaleys, esqr. one of the commissioners of this province with divers other persons of the company and servants of the said Thomas Cornwaleys, being in two pinnaces, called the St. Helen and the St. Margaret, in the peace, &c., Ratcliff Warren, commonly known by the name of lieutenant Warren, Richard

—,* and Robert Lake, with divers others, to the number of CHAP. 1.
 fourteen persons, or thereabouts, &c., in one pinnace belonging 1638.
 to William Clayborne, of the isle of Kent, gentleman, with
 force and arms, &c., on the day aforesaid, in the place aforesaid,
 upon the two pinnaces aforesaid, feloniously, and as pirates and
 robbers, an assault did make, and upon the said Thomas Corn-
 waleys and his company, divers guns charged with powder and
 bullets, did shoot and discharge, &c., and one William Ashmore,
 of St. Mary's, apprentice in the pinnace aforesaid, the day and
 year aforesaid, at the place aforesaid, did shoot and wound in
 the breast, on the left side, near the left papp, of which wound
 the said William Ashmore instantly died; and if the said Wil-
 liam Clayborne did encourage and instigate, and abet the said
 lieutenant Warren, to make and attempt the said assault upon
 the pinnace aforesaid, or upon any other the pinnaces, boats, or
 vessels belonging to St. Mary's; and if the said William Clay-
 borne did, by a special warrant or commission, under his hand,
 command, warrant, and authorize the said lieutenant Warren to
 seize, take, and carry away the pinnaces or other vessels be-
 longing to St. Mary's, contrary to the peace of the sovereign
 lord the king, his crown and dignity, and contrary to the peace
 of the said lord proprietor, his domination and dignity."

The other indictment is against Thomas Smith, gentleman,
 and three other persons, planters, for the murder of the same
 William Ashmore, and is in other respects, the same as the for-
 mer indictment, *totidem verbis*, except as to time and place, as
 follows: "Let inquest, &c., if in the harbour of great Wiggo-
 moco, in the bay of Chesapeake, on the tenth day of May, in
 the year of our Lord 1635, Thomas Cornwaleys, esq. one of the
 commissioners of the province, Cuthbert Hemirk, and John Hol-
 lis, servants of the said Thomas Cornwaleys, being in the good
 pinnace called the St. Margaret, in the peace, &c., Thomas
 Smith, of the isle commonly called Kent, gentleman, Philip
 Tailor, Thomas Duffil, and Richard —,† planters, together
 with divers others, to the number of fourteen persons, or there-
 abouts," &c., and so on, the same as the former indictment,
 charging William Clayborne also, as accessary before the fact,
 in the manner as before.‡

* The surname here in the record is not legible.

† The surname here in the record is not legible.

‡ See the record of these indictments, in an old thin leather book, (in the
 council chamber,) entitled, "Council Proceedings from 1637 to 1644," without
 pages.

CHAP. I. On account of the deficiency in the laws, and the exception
 1638. in the lieutenant general's commission, before mentioned, so that no capital punishment could be adjudged by any court of the province then existing, the trials on these indictments were postponed until the next meeting of the assembly.

The inhabitants of the isle of Kent refuse to submit. Notwithstanding these proceedings, and although Clayborne had, before this, departed for England, yet it seems, that the inhabitants of the isle of Kent, were far from being at this time quiet and obedient to the lord proprietor's government. The authority of the provincial government was yet so openly contemned and resisted, by many of the inhabitants of that island, as to render it necessary for the governor to proceed thither with an armed force, to quell and punish the refractory and disobedient. We find in the records of the "Council Proceedings" of this period, an entry explanatory of the reasons and causes of this measure of the government.

Governor Calvert proceeds with a military force against them. "By the governor and council, this 12th of February, 1637," (1638, N. S.) "the governor and council, taking into consideration the many piracies, insolencies, mutinies, and contempts of the government of this province, formerly committed by divers of the inhabitants of the isle of Kent, and that the warrants sent lately into the said island, under the great seal of the province, for apprehending some malefactors, and to compel others to answer their creditors in their lawful suits of debt or accompt, were disobeyed and contemned, and the prisoners rescued out of the officers' hands, by open force and arms; and being now newly informed, that divers of them do maintain and protect themselves in their said unlawful and rebellious acts, did practice and conspire with the Susquihanoughs and other Indians, against the inhabitants of this colony, have thought it fit, that the governor should sail, in person, to the said isle of Kent, and take along with him a sufficient number of freemen, well armed, and there, by *martial law*, (if it shall be necessary,) reduce the inhabitants of the said island to their due obedience to the lord proprietor, and by death, (if need be,) correct mutinous and seditious offenders, who shall not, (after proclamation made,) submit themselves to a due course of justice; and for his better assistance herein, it was thought fit, and so ordered, that captain Thomas Cornwaleys, esquire, and one of the council of this province, should go along with the governor, and be aiding and assisting to him, to the uttermost of his power, for the

command of the forces, according to such directions as he shall receive from the governor during the expedition. CHAP. I.
1638.

Signed,—Leonard Calvert,—Jerome Hawley,—John Lewger.”*

Preparatory also, to this expedition, the governor issued his proclamation, reciting, that “Whereas this present general assembly, begun on the 25th day of January, last past, and by several adjournments, continued until the 8th of this instant month of February, was then adjourned until the 26th of this instant month, now designing, at this present, to make an expedition in person, unto the isle of Kent, and doubting, lest some accident might hinder my return to St. Mary’s, afore the said day, whereby the assembly would of itself be dissolved, for want of power to assemble: know ye, therefore, that in case of such my absence, I have authorized and deputed Mr. John Lewger, secretary, in my name and place, to hold and convene the said assembly, at the day appointed, and to give voice for me to all such things as he shall think fit, also to adjourn or dissolve the said assembly, and to do all things in my stead, &c.

Secretary
Lewger
authorised
to hold the
assembly.

LEONARD CALVERT.”†

During the governor’s absence from St. Mary’s, the assembly met on the 26th of February, 1637, (1638, N. S.) according to adjournment. But after ordering “that privilege of parliament be suspended till the next meeting,” the house was adjourned till the 5th of March next.

The house met on the 5th of March, according to their last adjournment; but, the governor being still absent, “Mr. Secretary adjourned the house till the 12th of March following.”

“And the house ordered, that privilege of parliament should be suspended till the next meeting.”

The house met on the 12th of March, according to their adjournment; and the governor, being now returned‡ was present, and presided as speaker.

“Privilege of parliament was affirmed;” and the twenty bills draughted by the committee, which were formerly read, at the session on the eighth of February, were now read a second time.

* See the Provincial records, entitled “Council Proceedings, from 1636 to 1657,” p. 26, 27.

† Ibid. p. 28.

‡ The few reliques of records, relative to our history at this period, afford no trace of any of the proceedings of the governor and his suite on the isle of Kent during this his visit thereto.

CHAP. I. The house meeting again on the next day, (the 13th of March,) fourteen other bills were then read for the first time.

1638.

Act of attainder
against
William
Clayborne.

Which bills were again read on the succeeding day, (the 14th of March,) together with three other bills for the first time; one of which last was "for the attainder of William Clayborne, gentleman."*

The reader will observe, that Clayborne was charged as an accessary before the fact, to the murder and piracy, stated in the bills of indictment, before mentioned, found by the grand jury. On account of the deficiency of the laws, as before stated, the intervention of the legislature was deemed necessary, against both Clayborne and Smith. The former not being taken, the proceeding against him was by a bill of attainder; by which, his property within the province, became forfeited to the lord proprietor.† The latter being still held as a prisoner, he was, in the afternoon of this day, (the 14th of March,) arraigned and tried before the house, sitting as a court of justice. As the proceedings of a legislature, (under the degree of a house of lords,) acting in a judicial capacity, were even at this time uncommon, it is thought that an insertion of them here, as they appear on the records, will not be deemed improper.

Trial of
Thomas
Smith, one
of Clay-
borne's
men.

"Then was Thomas Smith called to the bar, being indicted of piracy, and Mr. Secretary made himself attorney for the lord proprietor, and read his lordship's warrant in that behalf. Then did the attorney put in the indictment, and demanded that the prisoner might be arraigned upon his indictment; and the indictment being read, he pleaded not guilty.

"Then did the attorney inform the house upon the indictment, and produced the depositions of John Tarbison and Arthur Brooks; and the prisoner pleaded all he had to say in his defence, and the attorney replied to it: and when the prisoner had no more to allege for himself, he was demanded whether he would challenge any in the house that were to pass upon him, and he challenged none; then they gave their votes, and he was found guilty by all the members except one.‡

* Although no copies of any of the bills or laws, passed at this session, are now to be found on our records, as before mentioned, yet, according to Chalmers's Annals, (ch. ix. note 20,) a copy of this act of attainder still remains in the Plantation office, England, "among the Virg. pap. 75 B. p. 126."

† See note (VIII.) at the end of this vol.

‡ The name of this dissentient member, as on the record, is not easily legible, but it appears to be *John Halfshide* or *Halfsehead*.

"Then was sentence pronounced by the president, in the name of all the freemen in these words: CHAP. I.
1638.

"Thomas Smith, you have been indicted for felony and piracy; to your indictment you have pleaded not guilty; and you have been tried by the freemen in this general assembly, who have found you guilty, and pronounce this sentence upon you: that you shall be carried from hence to the place from whence you came, and thence to the place of execution, and shall be there hanged by the neck until you be dead, and that all your lands, goods, and chattels, shall be forfeited to the lord proprietor, saving that your wife shall have her dower, and God have mercy upon your soul.

"Judgment affirmed and approved by special consent, by word of mouth, by captain Cornwaleys" and others (named in the record,) sixteen in number.*

"Then did the prisoner demand his clergy; but it was answered by the president, that clergy could not be allowed in his crime, and if it might, yet now it was demanded too late after judgment."†

It will be recollected, that in the rencounter between captain Cornwaleys and his company with Clayborne's men before mentioned, several persons of the latter party were said to have been killed by the fire of Cornwaleys's men in resisting the attack upon them first made by Clayborne's party, as alleged by those of Cornwaleys. It was, therefore, deemed necessary by the house, that inquiry should be made by them of these facts, and their proceedings thereon, appear upon the records to have been as follows: Inquiry by the assembly into the conduct of captain Cornwaleys.

"Then departed out of the house, captain Cornwaleys, Cuthbert Fennick, William Lewis, John Nevill, Anthony Cotton, Edward Fleete, and Cyprian Thoroughgood.

"Then was the house moved by the attorney to inquire of the death of William Ashmore, Ratcliff Warren, John Bellson, and William Dawson, and the house having heard the evidence of Cyprian Thoroughgood, John Nevill, Cuthbert Fennick, and Edward Fleete did find that the said Ratcliff Warren, John Bellson, and William Dawson, with divers others, did assault the

* By this the whole house of assembly must at this time have consisted of seventeen members, including John Halfheade the dissentient.

† No subsequent mention of Thomas Smith appears on the records, nor is it certain what was his final fate. It is probable, that he was executed in pursuance of his sentence.

CHAP. I. vessel of captain Cornwaleys and his company, feloniously and
 1638. as pirates and robbers to take the said vessel, and did discharge
 divers pieces charged with bullett and shott against the said
 Thomas Cornwaleys and his company, whereupon and after such
 assault made, the said Thomas Cornwaleys and his company in
 defence of themselves and safeguard of their lives, not being
 able to fly further from them, after warning given to the
 assailants to desist from assaulting them at their own peril,
 did discharge some guns upon the said Ratcliff and his company,
 of which shots the said Ratcliff Warren, John Bellson, and
 William Dawson died, and so they find that the said Thomas
 Cornwaleys and his company did lawfully, and in their own ne-
 cessary defence kill the said Ratcliff Warren, John Bellson, and
 William Dawson, and do acquit the said Thomas Cornwaleys
 and his company of the death of the said Ratcliff Warren, John
 Bellson, and William Dawson.

“And they further find, that the said Ratcliff Warren and his
 company did discharge their guns against the said Thomas Corn-
 waleys and his company, and did kill the said William Ashmore,
 being one of the company of the said Thomas Cornwaleys, as
 felons, pirates and murderers.”

That the assumption of judicial power by the house of as-
 sembly at this time, was not confined to Smith's case, appears
 from the journal of the house for the succeeding day, (the 15th of
 March,) where an entry appears of the following purport: “Then
 was fined to the lord proprietor Thomas Baldrige, 40*lb.* tobacco for
 striking John Edwards.” It is true, that this might have arisen
 from the fact being perpetrated in the presence of the house, on
 which occasion, by the law of parliament, they would have had
 power to impose the punishment of imprisonment as for a con-
 tempt; but the journal does not authorise this supposition of the
 circumstances of the case.

Resolution
 of the as-
 sembly re-
 lative to
 servants.

Another entry on the journals of the house, of the 17th of
 March, may perhaps be deemed worthy of notice, as tracing a
 feature of the early habits, manners, and customs of our ances-
 tors:—“Then upon a question moved touching the resting of
 servants on Saturday in the afternoon, it was declared by the
 house that no such custom was to be allowed.” It may be re-
 marked, that notwithstanding this declaration of the legislature,
 the custom has in some measure, even with slaves, prevailed
 throughout the province.

On the last day of the session, (March 24th,) which, according

to old style, was the last day of the year 1637, the several bills which had been prepared to be passed by the house were now
 “fairly ingrossed and read, and after the reading of them the governor signed them, and so did the rest of the house. And so the house dissolved.”

CHAP. I.
 1638.
 The assembly dissolved.

However beneficial and necessary for the province those laws now enacted by the assembly, and assented to by the governor, might have been, yet it seems when they were sent to England and propounded to the lord proprietor for his assent, he thought it proper to reject them. Of his reasons for so doing, we are no where positively informed; but the same conjecture we have before ventured, may be again hazarded;—that he had resolved to retain the right of first propounding the laws to be enacted by any assembly of his province. Although a complete list of the *titles* of these laws remains upon our records, yet the laws themselves at large are not extant,* no copies of them appearing upon our records.† Many of those laws were, probably, afterwards re-enacted under the same or similar titles. The contents of some of them, however, to which we do not find subsequently any with titles similar, would interest our curiosity even at this day, particularly the first on the list, entitled, “A bill for dividing of the province.” From the titles of several bills immediately following, relative to manors, and one entitled, “A bill for Baronies,” we are induced to suppose, that besides the division of the provinces into counties, a further division of the same was contemplated into baronies and manors, with their feudal appendages of courts-baron and courts-leet. This may, probably, have been the cause of its being stated by some writers, that the province was originally divided into baronies and manors. Although many manors were subsequently laid out and granted to individuals, yet it does not appear, that in the division of the province into *baronies*, (at least in the feudal sense of the word,) was ever carried into effect; for we are told, that “no grant of a barony is to be found on record.”‡ Another title of the bills of this session, to wit, “A bill for settling of the

The lord proprietor refuses his assent to the laws enacted by the assembly.

* Except that for the attainder of William Clayborne, a copy of which, according to Chalmers, as before mentioned, is still extant in the Plantation office, England.

† See a complete list of them published in Bacon’s edition of the Laws of Maryland, 1637, where it is said, “They were never enacted into laws;” meaning, without doubt for want of the lord proprietor’s assent to them; “nor are any copies of them, or of those sent in by his lordship, to be found in our records.”

‡ See note (IX.) at the end of this volume.

CHAP. I. *Glebe*," attracts notice. As the word *glebe* is synonymous to 1638. *church-lands*, it implies, that a church establishment was contemplated by the first settlers of the province, who being, as may be presumed, principally Roman Catholics, intended that sect of the christian religion to be the established church of the province.

In a few days after the dissolution of the assembly, the governor, it seems, formed an intention of visiting the colony of Virginia. This appears from an instrument of writing, bearing date, April 1st, 1638, in which he states, that "being to be absent for a while, out of this province, in Virginia, he assigns, deposes, constitutes, and appoints his respected friend Mr. John Lewger, secretary of this province, to be in his place and stead lieutenant-general of this province during his absence and no further or longer."* Whether he put in execution this intention or not, or what business of importance called him there, we are not informed. A similar instrument of writing, or commission, was afterwards, on the 27th of May, 1638, executed by him to captain Thomas Cornwaleys, esqr. in nearly the same words and with a similar intention of being "absent for a while out of this province in Virginia."† On the same day last mentioned, and probably with a like view, he issued a commission to John Boteler, appointing him "captain of the militia band of the isle of Kent, and giving him full power to muster and train all sorts of men able to bear arms within the said isle, (the commander of the said island only excepted,) and in case of any sudden invasion of savages or pirates to make war, as likewise to execute martial law against any mutinous or disorderly persons, and to make and publish any orders which he should think fit for the defence and safety of the island, enjoining all persons whatsoever within the said island to subserve the said orders and commands of him the said John Boteler in all matters concerning martial discipline."‡

* "Council Proceedings from 1636 to 1657," p. 29.

† This commission to captain Cornwaleys is in an old thin book, entitled "Council Proceedings from 1637 to 1644," most of the contents of which, this commission and some other important documents excepted, are transcribed into a larger parchment book, entitled "Council Proceedings from 1636 to 1657." Mention is here made of this circumstance to point out a small variance in the references here used. These commissions, in case of the absence of the governor out of the province, are authorised by the before mentioned *Ordinance* of the lord proprietary, bearing date April 15th, 1637.

‡ "Council Proceedings from 1636 to 1657," p. 31.

Clayborne having been sent to England by the governor of Virginia, or having voluntarily himself returned thither, after the military outrage committed by his men, through his orders, on the Maryland colonists, as before mentioned, he preferred a petition to the king, in order to obtain redress of the "wrongs and injuries," which he had sustained, as he alleged. The imperfect copy of this petition now remaining on our records, has no date; but from the proceedings of the privy council thereon, it would appear to have been presented on or about the 26th of February, 1637, O. S. (1638, N. S.) This petition in substance states, that he (William Clayborne,) and his partners, (who, from a subsequent document, appear to have been a certain William Cloberry, and David Morehead, merchants of London, in England,) by virtue of a commission under his majesty's hand, divers years past,* discovered and planted the isle of Kent in the bay of Chesapeake, which island *they bought of the kings of that country*; that great *hopes for trade* of beavers and other commodities were like to ensue by the petitioners' discoveries; and that lord Baltimore, observing this, had since obtained a patent; within the limits of which he comprehended the said island; that on complaint thereof his majesty had signified his royal pleasure by letter, intimating therein, that it was contrary to justice and the true intent of his majesty's grant to lord Baltimore, and also that his majesty in the said letter directed, that notwithstanding the said patent to lord Baltimore, the petitioners should have freedom of trade, and required the governors and all others in Virginia to be aiding and assisting to them, and forbade the lord Baltimore or any pretenders under him, to offer them any violence, or disturb or molest them in their plantations, "as by the said letter annexed to this petition appeareth."† The petition proceeds to state, that although his majesty's pleasure had been made known to the governor of Virginia,‡ (who slighted the same,) as also to the lord Baltimore's agents in his province, yet they had, in a most wilful and contemptuous manner disobeyed the same, and violently set upon the petitioners' pinnaces

CHAP. I.
1633.
William Clayborne's petition to the king in council, and order thereupon.

* This must refer to the instructions of the king, under which several commissions or licenses were granted by the governors of Virginia, during the years 1627-28-29, to William Clayborne to discover the source of the bay of Chesapeake, as before stated in the introduction to this volume.

† I do not find any such letter extant upon the records of the province, or elsewhere. It is not to be doubted, however, but that a letter of that import was signed by his majesty.

‡ This must have been Sir John Harvey; for Sir William Berkeley, his successor, was not appointed governor of Virginia until the year 1639.

CHAP. I. and boats, &c. The petition then rehearses the transaction of
 1638. the petty battle before mentioned, between captain Cornwaleys and Ratcliff Warren.

It is further stated in the petition, that the petitioners had discovered and settled a plantation and factory upon a small island,* in the mouth of a river, at the bottom of the said bay, in the Susquehanock's country, at the Indians' desire, and purchased the same of them; by means whereof, they were in great hopes to draw thither the trade of beavers and furs, which the French then wholly enjoyed "in the grand lake of Canada;" but lord Baltimore had interrupted them and seized their possessions.

The petitioners then propose in their petition to pay to his majesty the annual sum of £100, viz: £50 for the isle of Kent, and £50 for the said plantation in the Susquehanock's country; to have there twelve leagues of land on each side of the river, extending from the mouth to the head of the said river, and "to the grand lake of Canada;" to be governed according to the laws of England, with such privileges, as his majesty should please to grant.

The petition then prays his majesty, to grant a confirmation of his former commission and letter, before mentioned, for the quiet enjoyment of their said plantations; and to refer the examination of their wrongs and injuries to such persons as his majesty should think fit.

The petitioners appear to have succeeded so far, that their *proposals* were approved by his majesty in council; that he confirmed (verbally, as it would appear, whilst sitting in council,) "what was contained in his former commission and letter under the broad seal;" and that a reference was made to the commissioners for plantations, to prepare a grant agreeably thereto for the king's signature, and to examine the wrongs complained of.†

We may stop here just to remark, that had Clayborne and his partners been so fortunate as to have obtained the grant they now prayed for, (to wit, twelve leagues or thirty-six miles on each side of the Susquehanah to "the grand lake of Canada," which we may suppose to have been lake Ontario,) his province would not only have been thrown into an absurd serpentine form, but would have thwarted the general plan manifestly intended in all the first grants of the British colonies, to wit, of giving them

* Afterwards called *Palmer's* island.

† See this petition and the proceedings of the council thereon, at large in note (X.) at the end of this volume.

a certain breadth on the sea-board, and extending them in parallellogram across the continent to the Pacific ocean. William Penn's inheritance would have been anticipated, or spoiled; and a large portion of the Dutch province of New Netherlands lopped off; though, possibly, some small national benefit might have arisen from a participation in the northern fur trade. This consideration seems to have been artfully introduced by Clayborne, as a lure or bait to catch the cravings of the needy monarch. The colonization of Canada demonstrates, that the immediate profits arising from a commerce in peltry and fur are stronger incentives to a speedy settlement of colonists in an uncultivated wilderness, than the slow but more certain and permanent benefits accruing to the mother country from populous and well cultivated colonies. Lord Baltimore's motives were purely political and religious; Clayborne's were founded on private self-interest, though plausibly holding out at the same time the possibility of immediate commercial advantages to the nation or its monarch. But these advantages must necessarily have vanished with the increasing population of the country, as the events of the present day have demonstrated.

The apparently sudden resolution of the king in council, on the foregoing petition, is not easily to be accounted for at this day. It may be inferred, that Clayborne had some powerful friends near the person of the king; and from the facts advanced by a learned annalist,* it would appear that the king's secretary for Scotland, Sir William Alexander, who was then or had lately been interested in the establishment of a colony in Nova Scotia, under the hope of promoting a beneficial traffic between that country and Virginia, had taken Clayborne under his patronage. Some repugnancy or contradiction in the dates of the several documents, relative to this petition of Clayborne, throw an obscurity also over the whole transaction. The learned annalist, just mentioned, has furnished us with a copy of the decision of the lords commissioners of the council, to whom, as he says, "this tedious controversy was referred," and "after hearing all parties," they made their adjudication "in April, 1639."† But, from the copy of this state paper, now extant on the Maryland Records, corroborated by numerous other documents, which re-

* See Chalmers's Annals, ch. iv. and ch. ix.

† The copy of this decision, which Mr. Chalmers has given us, (in his Annals, ch. ix. note 25,) purports to have been taken by him,—“From Maryland Papers, vol. 1, bundle C.” in the Plantation Office, England.

CHAP. I. cognize and refer to the decision of the council, we are induced
 1638. to adhere to the date, which they have annexed to it, and that the lords commissioners made their final adjudication within a little more than a month after the reference to them, as before mentioned, on the fourth of April, 1638. The substance of their adjudication was,—“that the lands in question absolutely belonged to lord Baltimore, and that no plantation, or trade with the Indians, ought to be allowed, within the limits of his patent, without his permission, that with regard to the violences complained of, no cause for any relief appeared, but that both parties should be left to the ordinary course of justice.”*

Within a few months *after* this decision of the lords commissioners, but, as we may fairly conjecture from circumstances, *before* the lords commissioners had “certified his majesty what they had thought fit to be done,” agreeably to the terms of the reference before stated, that is, *before* his majesty had seen or known their adjudication, Mr. Clayborne, assisted by Sir William Alexander, his patron in the business, “partly by misrepresentation,” as the before mentioned annalist observes, procured in July, 1638, a royal order to lord Baltimore, commanding him to allow Clayborne and his agents or partners, to enjoy their possessions, and be safe in their persons and goods, till the cause referred, as before mentioned, should be decided.† Lord Baltimore, on receiving the order, (as the annalist proceeds to state,) “with an attention which he deemed due to the commands of his prince though founded on misinformation, said: that he would wait on the king, and give him perfect satisfaction.”‡ Subsequent events justify us in supposing, that when the king came to be fully informed of all the circumstances relative to Clayborne’s claims and lord Baltimore’s rights, the adjudication of the lords commissioners was finally ratified by his majesty, and in the terms of that decision, “both sides were left to the ordinary course of justice.”

In virtue of this decision of the lords commissioners, and, most probably, in pursuance of some special order from his majesty to that purpose, the governor of Virginia (Sir John Harvey,) issued his proclamation, bearing date “the 4th of October, *Anno Regni Regio Caroli decimo quarto, Annoy. Domi. 1638,*” expressly for the purpose of prohibiting “all persons inhabiting

* See this State Paper at large, in note (XI.) at the end of this volume.

† See this order or letter in note (XII.) at the end of this volume.

‡ For this he cites “Virg. Pap. 75 B. p. 147.”

within Virginia to use any trade or commerce for any kind of commodity whatsoever with any of the Indians inhabiting within the province of Maryland, viz. northward from the river Wiconowe, commonly known by the name of Onancock, on the eastern side of the grand bay of Chesapeake, and northward from the river Chinquack called great Wicocomico on the western side of the said bay,* without license from the lord Baltimore or his substitute, upon forfeiture of their goods and vessels, and such imprisonment of the party offending, as should be thought fit by the government and council" of Virginia.†

It would be unnecessary to undertake, at this day, a full justification of the preceding report or decision of the lords commissioners. It may, however, be again remarked, that Clayborne's views partook more of private emolument than public good. It is true, that promoting the fur-trade might have been a national benefit. But it is to be remembered, that national prosperity was supposed, at that time, to be much involved in the settlement of colonies. The social feelings of humanity, as well as moral sentiment, seem to urge a strong claim of preference, where the object is to indulge our fellow-beings in their religious opinions. Clayborne's intentions were mingled with no such sentiments. The settlement of a numerous colony on the frontiers of Virginia, also, was certainly adding to that province additional security against the hostilities of the savages. If it be true, as asserted, that the settlement of the colony of Maryland cost lord Baltimore, for the two first years only, forty thousand pounds sterling;‡ it is not probable that Clayborne, with even the assistance of his partners, could have afforded to expend the necessary requisites for the establishment of an adja-

* From these expressions in this proclamation it may be inferred, that the thirty-eighth degree of latitude was then deemed to cross the eastern shore of Virginia as low down in Accomack county as Onancock creek, or at least that the southern limits of Maryland extended that far south. As to the restriction of the Virginians in their Indian trade on the western side of the bay, within the *Chinquack*, called great Wicocomico river, it is not impossible, that, in consequence of the expression in the charter of Maryland as to the south bounds thereof,—“following the *Pattowmack* on the west and south, unto a certain place called *Chinquack*, situate near the mouth of the said river”—*Pattowmack*, the southern limits of that province, at least as to the jurisdiction over the bay of Chesapeake, were deemed to extend to the mouth of the *Chinquack*. It is probable, that most of the trade with the Indians was at that time carried on by water, in different parts of the bay and its tributary streams.

† See this proclamation at large in note (XIII.) at the end of this volume.

‡ Chalmers's Annals, ch. ix.

CHAP. I. cent colony, convenient and ready for affording aid to Virginia
1638. on any sudden emergency. Their proposed colonization on the banks of the Susquehanah would have been, at that time, too remote for such a purpose. There appear, even at this day, sufficient reasons for granting the territory in question to lord Baltimore, notwithstanding the previous *licenses to traffic*, which had been before granted to Clayborne. Indeed, the question seems to have been, in some measure, decided by the government of the United States since their independence. Congress have regulated by law, the trade and intercourse to be carried on by the citizens of the United States, with the several tribes or nations of Indian natives, resident within that part of the continent of America, which the United States claim as their territories. They have enacted, that no person shall trade with the Indians, without *special license* obtained from the government of the United States for that purpose.* This is, without doubt, founded on good policy; it tends to prevent individual citizens from acting in such manner with the savages, as to irritate and cause them to make attacks on the peaceable frontier settlers. These laws, moreover, forbid such *traders* from making purchases of lands from the Indians, the United States claiming that privilege alone, for the government in its corporate capacity. Should any trader, therefore, obtain by purchase or voluntary grant from the Indians, even as much land as would suffice for him to put a temporary trading-house thereon, and should occupy the same for many years, during his license for such trade, and the United States should "extinguish the Indian claim" to such lands, as included the trader's purchase, or, (what in the opinion of some philanthropists amount to the same thing) take the same lands from the Indians by force, and make sales and grants thereof to such of their citizens as would purchase the same; it is apprehended, that such *licensed trader* would not be admitted to contend, that he had bought his house and land from the Indians, and the United States had, therefore, no right to sell or to give it away to any other citizen. He would probably be told, and very properly too, that the United States, being about to fix a colony or settlers in that part of their territories, had made a grant of the same to a company, who were about to settle thereon, and, if he wished to possess any lands there, he must purchase of the government or of its grantees,

* See the acts of congress of 1799, ch. 152; and 1802, ch. 13.

like any other citizen, his purchase of the Indians being illegal and contrary to the true policy of the United States. Nay more, the president would be authorised by law to use *military force*, in driving him from those lands, of which he had so possessed himself. Now, this statement precisely comprehends Clayborne's right and claim, although king Charles I. might have had no right to dispossess the Indian natives of the country which they inhabited, yet he certainly, as the representative of the nation of which he was the monarch, had as much right to the Indian lands of America, as the government of the United States now have; his grants thereof were equally just, and therefore equally valid. The pretended or real purchase of an individual *licensed trader*, (as Clayborne was,) of the Indian natives, could not, nor ought not to have precluded the king from making a grant thereof to a company, or to an individual possessing equal means, such as lord Baltimore, who would undertake to transport thither a numerous colony of his subjects, for the benefit of the mother country. The severance of a portion of the territory of Virginia was really beneficial to that colony, inasmuch as the addition of such a number of their fellow-subjects, seated on their frontiers, would contribute much to their security from the hostile invasions of the savages. This benefit was not likely to arise from the manner in which Clayborne, with his fellow-traders, were going on. Thus, it would seem, there was in reality no injustice done to any individual whatever, by the grant of the province of Maryland to lord Baltimore; and, if the policy of planting distant colonies is really beneficial to an over-populous country, and the measure be dictated also by the liberal generosity of indulging mankind in their religious opinions, the unfortunate Charles may be said to have done at least one act, in his life, with which posterity ought not to reproach him.

To close the lord Baltimore's contest, at this time, with Clayborne and his adherents, it will be proper to take notice here of some proceedings of the Maryland government at St. Mary's against Clayborne's property, and that of his partners, still remaining on the isle of Kent. The two merchants of London before mentioned, William Cloberry and David Morehead, whom Clayborne had taken into partnership with him, possibly with a view to the establishment of a fur-trade, had, by furnishing intelligence and "sundry supplies of men, arms, and other commo-

CHAP. I. dities, ministered succour and means to the said William Clayborne, to defend and maintain the said island against the lord Baltimore's just right and title, and to drive a trade with the Indians of his province." They had also, it seems, contemplated the establishment of a lumber-trade on that island, and for that purpose had sent out from England coopers and workmen, who had felled a great quantity of timber for making pipe-staves, to the value, as is stated, of £1000 sterling. These still remaining on the island, with perhaps other property appertaining to the partnership, the government at St. Mary's thought it proper to proceed against them in a legal manner, and accordingly a writ of attachment (dated January 2d, 1638, O. S.) was issued for the seizure of these pipe-staves, as well as other goods and chattels belonging to the partnership; which writ we may suppose to have been legally and effectually executed; for, it appears, that his lordship's provincial government was in quiet possession of that island in the month of December next preceding the date of the writ.*

The nature
of their
traffick
with the
Indians.

As the profits arising from the traffic with the Indian natives was one of the principal causes operating with Clayborne and his party in so strenuously resisting the authority of lord Baltimore over the isle of Kent, it would be a desirable circumstance, could we furnish the reader with a satisfactory account of the nature of such traffic. But our records afford few materials for that purpose. From the uniform sameness, which pervades the savage life among the aborigines of North America, it will readily be supposed, that it could not be much variant from the traffic with them of the present day. Peltry, in its various kinds, without doubt then constituted a considerable staple.† We find also, that much barter was at that time carried on with them for that useful article of human life,—maize, or Indian corn. It is probable, however, from the favourable circumstances attending their first settlement, that the Maryland colonists were not quite so dependent on the Indians for sustenance, particularly as to corn, as those of Virginia had too frequently suffered themselves to be; but we may suppose, that the Virginians were by this time able to spare them some bread-stuff, when they should be occasionally in want of it; and we are told, that “the

* See a copy of this writ in note (XIV.) at the end of this volume.

† See note (XV.) at the end of this volume.

new comers" of Maryland furnished themselves with hogs, poultry, and some cows from Virginia.*

CHAP. I.

1638.

It ought to be observed also, that there was at this time in Maryland, as well as in the more early times of the colonization of Virginia, some peculiar articles apparently of trifling value, which formed both a subject and a medium of commerce with the natives of our continent, and which we do not find mentioned by the traders among them of the present day.† As a fondness for personal ornament seems to be deeply engrafted in the human character, whether civilized or savage, whatever contributes to the gratification of this passion, being always in demand, acquires an artificial value. Hence with all our early voyagers to the continent of America, we find that *glass beads* were a more essential article for traffic with the natives than either dollars or guineas; and hence the colonists of Virginia were induced in the year 1621, to set up a manufactory of that article, as a mint for the coinage of a current medium of commerce with the Indians.‡ The aborigines were not, however, prior to the arrival of the Europeans, destitute of a substitute for this article. A species of manufactory, subsisted among them in their rude state, of pieces of the *Conck* or *Cockle* shells, so wrought and perforated as to be strung upon strings, and being highly polished and of variegated colours were used as ornaments to the person, particularly with the female sex, as necklaces and bracelets of pearl or other valuable jewelry are now worn by the belles of London and Paris. Those manufactured by them of the *Conck* shell, they called *Peak*; those of the *Cockle* shell, they called—*Roenoke*: the latter being esteemed of much less value than the former. We find, that both these articles were industriously procured by the early colonists of both Virginia and Maryland, as a subject of barter, or medium of traffic with the natives for the more useful articles of maize and peltry; and it appears, that they were counted sometimes by the yard, fathom, or arm's length, and sometimes by the bushel; most probably in the latter way before they were strung, and in the former afterwards.§

* Oldmixon's Brit. Emp. in Amer. vol. 1, p. 189.

† It is stated, in the journal of Lewis and Clark's expedition in 1804, that the Indians on the sources of the *Columbia* river, estimate *beads* as of more value than any other article, that can be offered to them. It would seem, that these Indians had never been in the habit of any intercourse with white men.

‡ Burk's Hist. of Virg. vol. 1, p. 222; who cites Stith's Hist. p. 197.

§ Thus in the schedule of goods seized, belonging to Clayborne, on Palmer's

CHAP. I. This traffic with the Indians within the province appears to
 1638. have been thought of so much importance, (probably with a view of checking the unlawful intercourse with them still kept by Clayborne and his party,) as to induce the appointment, from time to time, of agents or superintendants thereof accordingly, commissions appear to have issued to different persons at different times in this year, authorizing them to take all persons with their vessels and property, who shall be found transgressing in that respect.*

Their
coasting
trade.

Some *coasting* trade also by sea appears to have now existed with the Maryland colonists in a small degree, especially with the Dutch on Hudson's river; for we find in our records, licenses (similar to that before mentioned, granted by the governor of Virginia to William Clayborne,) "to trade and commerce *with the Dutchmen in Hudson's river*, or with any Indians or *other people whatsoever* being or inhabiting to the northward without the capes commonly called Cape Henry and Cape Charles."†

Their
trade to
Europe.

In imitation of her elder sister, the Virginia colony, Maryland appears to have adopted the cultivation and consequent exportation of *tobacco*, from her earliest settlement; at least, we may suppose the colonists of Maryland to have commenced the growth of this plant, as soon as cleared grounds for the purpose could be spared from the necessary culture of Indian corn. For, we find in the list of the bills passed or drawn up, at the session of assembly last mentioned, one entitled, "A bill for ordering the payment of tobacco."‡ This article of the produce of the lands had now become, as it had before this in Virginia, the current medium of trade among the colonists themselves, as well as the means by exportation, of buying in the mother country such necessities and conveniences as their situation might dictate. The purport of this bill was, therefore, as we may conjecture, since we have no record or copy of it, to ascertain the *price* at which tobacco should be rated per pound, and re-

island, (as before mentioned,) were—"six yards of *Peake*, and one yard and a half of *Roenoke*."—Also, the emperor Powhatan, when he was applied to, in the year 1614, for his second daughter to be given in marriage to one of the colonists, replied,—"that he had sold her, a few days before, to a great Werowance, for two *bushels* of *Roenoke*." Burk's Hist. Virg. vol. 1, p. 174.—See a further explanation of *Peake* and *Roenoke* in note (XVI.) at the end of this volume.

* See note (XVII.) at the end of this volume.

† See note (XVIII.) at the end of this volume.

‡ See the list of bills in Bacon's Laws, of the first session noticed by him.

ceived in payment of debts, or in the purchase of goods, or articles of commerce. A similar regulation of this staple of trade and medium of commerce had been adopted in Virginia, in the year 1618, under an edict or law enacted by governor Argall;—"That all goods," (goods *imported* we may presume,) "should be sold at twenty-five per cent., and tobacco allowed for at *three shillings* per pound, and not under, nor over, on the penalty of three years slavery to the colony."* Whether at this early period of the Virginia colony, there was a difference of exchange between Virginia and England, or whether the sum just mentioned meant three shillings sterling or not, is not explained in the edict. But, as it is said,† that Virginia tobacco sold in England about that time for "three shillings," we may infer, that the "three shillings per pound," above mentioned, was money accounted at its sterling value.‡ As no copy or record remains of the proposed Maryland bill, before mentioned, we have no sufficient grounds to ascertain the price of tobacco thereby regulated. We may suppose it to have been the same, or nearly so, with that of Virginia; for, it seems, that the Maryland colonists were in the habit, at this time, of exporting a part of the tobacco made by them to Virginia, and not the whole of it directly to England, as will appear from a law enacted at the next session in 1638-9. We are to suppose too, that the several regulations, resulting from the several proclamations of

* Burk's Hist. of Virg. vol. 1, p. 194; who cites Stith's Hist. p. 147; see also Chalmers's Annals, p. 38.—However proper it might have been to check the impositions practised upon the planters by the importers and retailers of goods, yet the obvious disproportion between the crime and the penalty, not only in this instance but in others of the same date, might well acquire to governor Argall the character of a "tyrant," in whom, it seems, the supreme authority in Virginia, both executive and legislative, was at this time vested. The expression,—"*slavery to the colony*," meant a servitude for years on some one of the plantations, which were then cultivated, under the directions of overseers or agents, at the expense and for the benefit of the *Virginia Company* in England, to whom the province, being then proprietary, belonged by virtue of their several charters before their dissolution.

† Burk's Hist. of Virg. vol. 1, p. 207.

‡ Chalmers observes, (Annals, p. 46,) that when the importation of young girls into Virginia took place, in the year 1620, for wives for the planters.—"the price of a wife to the husband, who purchased her, was *one hundred pounds of tobacco*, for each of which" (pounds of tobacco,) "there was then allowed, in money, *three shillings*." From whence it may be inferred, that, as tobacco sold in England for *three shillings*, and the price of it in Virginia also was rated at *three shillings*, there was, at this period of time, little or no difference between currency and sterling.

CHAP. I. both king James and his son Charles, relative to the importation
1633. of tobacco from Virginia and Bermudas into England, were now deemed to be applicable and in force as to the importation of that article from Maryland. These proclamations, however exceptionable in some of their regulations, were founded upon a principle long pursued by the mother country, and which is certainly bottomed upon the best colonial policy, that is, of excluding the importation of any particular commodity from any foreign country, when the same commodity can be imported from the colonies. Hence, as Spanish tobacco was in greater demand in England than that of Virginia, on account of its supposed superior flavour, and would, when for sale, command a higher price, James, notwithstanding his invincible aversion to that noxious weed in all its shapes, and his ardent endeavours joined to those of the old Virginia company, to persuade the colonists of Virginia to adopt some other staple, particularly silk, yet, in order to favour his colonies, permitted the importation of tobacco from Virginia and Bermudas, and prohibited it altogether from Spain or her colonies, and at the same time prohibited the cultivation of it in England. Some regulations, however, relative to the imposition of *customs* or *duties* upon the importation of tobacco into England from the colonies, being deemed by the Virginia Company injurious to their interests, and consequently perhaps to the planters, they established warehouses and appointed factors in Holland, and sent all their tobacco there, so that in the year 1621, no tobacco whatever was imported into England from Virginia. But this being found contrary to another colonial principle, perhaps equally just as the former, that the mother country was entitled to the exclusive benefit of the trade of the colonies, it was soon prohibited. This prohibition was by an order of the king in council, issued in October, 1621, commanding that "no tobacco, or other productions of the colonies shall thenceforth be carried into foreign parts, till they are first landed in England, and the custom paid:" assigning these remarkable reasons; "that the king, weighing the great advantage, which this crown and estate might receive from a well ordered plantation in Virginia, granted several immunities to the colonies, as not doubting but that they would apply themselves to such courses as might most firmly incorporate that plantation into his commonwealth; that to suffer, therefore, a foreign trade, is as inconsistent with the view in the planting of Virginia, as

with just policy or the honour of the state.”* But this order, CHAP. I.
it is said, was disregarded or eluded; for tobacco continued to 1638.
be sent to Holland from both Virginia and the Somers isles;
which occasioned the prohibition or order to be renewed in the
following March, 1622. By this last order the governor and
colonists were required to prevent the like practices in future,
and also to procure the return of those ships, which had been
lately sent to foreign parts, “upon those penalties that the con-
temners of the authority of the board may expect.” The colo-
nial officers were commanded to publish this order in their
several courts, “and to look that it be executed.” And it was
transmitted to Virginia for the information of the people, that
they might know how to comfort themselves therein. It may
be inferred, however, from some proceedings of the next Mary-
land assembly, that the exportation of tobacco from the colonies
to foreign countries was still, secretly perhaps, carried on.—The
salutary colonial principle, first above mentioned, of prohibiting
the importation of foreign tobacco into England, appears to have
been adopted by James at the instance of the house of com-
mons, and he deserves no other credit for it, than that of yield-
ing, for once, to the wholesome advice of the representatives of
his people.†

His son and successor Charles, soon after his accession, re-
newed by proclamation the several regulations of his father on
this subject;‡ and subsequently issued several other inconsis-
tent proclamations in further regulation thereof.§ One in Au-
gust, 1627, deserves notice; it commanded, “that no tobacco
shall be planted in England or Ireland, and that justices of the
peace and constables shall pluck it up;|| that all imported from
the colonies shall be delivered to the king’s commissioners, at a

* Chalmers’s Annals, p. 53, who cites Virg. Entr. 1 vol. p. 201, in the Planta-
tion office.

† For the several regulations of tobacco by proclamation and otherwise, in
the reign of James; see Hazard’s Collections, vol. 1, p. 49, 89, 93, 198, 224;
and Chalmers’s Annals, p. 47, 50, 53, 64, 67, 70.

‡ See Hazard’s Collections, vol. 1, p. 202.

§ See the substance of them stated in Chalmers’s Annals, p. 129.

|| King James had, by proclamation dated December 30th, 1619, made the like
prohibition nearly in the same words; which induced Sir Edward Coke, in a de-
bate on public grievances in the session of parliament of 1621, to observe, “that
never, till within these forty years, was there any restraint made, other than by
act of parliament, that a subject, being a freeholder, shall not plant what he list
in his own ground.” Chalmers’s Annals, p. 49. See this proclamation of 1619
stated in that of 1620, in Hazard’s Collections, vol. 1, p. 93.

CHAP. I. price to be agreed on, of whom every one shall buy it; and that
 1638. for the prevention of frauds, no foreign tobacco shall be imported from the colonies.”* Although Virginia and Bermuda only are particularly mentioned in most of these proclamations, yet, as the regulations prescribed by them seem to have been intended to operate on the importation of tobacco from all the British colonies, which then grew that article, it may be inferred, that so soon as Maryland began to cultivate and export that article, it would then become subject to the same regulations in that branch of commerce as the other colonies. However, we find one other regulation relative to this subject, which took place after the settlement of the Maryland colony, and in which there are some expressions appearing to have been intentionally inserted therein, in order to include that colony. The commission to Sir William Russell and others, bearing date, June 19, 1635, after stating the hardships and oppression, which the colonists residing “upon *our English plantations* suffered by the secret and indirect trade of particular merchants and shopkeepers, who make a prey of them and their labours, by supplying their necessities with commodities at unreasonable rates; which unconscionable course of the said merchants and shopkeepers had been so grievous to the planters, that they had been forced, not only to petition for an abatement of the customs and imports, but to send the most part of their tobacco to foreign parts;” and after stating the royal resolution, “to have hereafter *the sole preemption* of the said tobacco upon the said plantations, and that at such rates and prices as should be found fit;” authorises the commissioners therein named, “to call before them all *persons having any interest* in the plantations of Virginia, Bermudas, the Caribe Islands, or *any other of our English colonies*, and require them to declare their several interests,†—what quantities of tobacco they have upon their several plantations, what they expect upon their returns, and when they shall have the same;

* Chalmers’s Annals, p. 118; who cites Rymer’s Fœd. vol. 18, p. 920.—The king had in the preceding February, (1627, N. S.) issued a proclamation, allowing the importation of 50,000*lb.* of *foreign* tobacco, observing therein, as his motives thereto, that the desire of taking tobacco still increased, notwithstanding every opposition,—that his subjects preferred the Spanish tobacco, and that *he was willing to give way to the infirmities of his people.* Ibid. p. 129.

† It would seem, from the tenor of this commission, that “the persons having interests,” &c. were such persons as resided in England, and had property or debts in the above mentioned colonies; and the words—“any other English colonies,” would include Maryland, though not specially named.

and, in the name of the king, to treat and contract with them for their several quantities ; and to assure the planters and owners themselves upon the said plantations, that a commission will be sent into every of the said plantations to treat and conclude with them a contract for their tobacco.”*—It must be confessed, that however inconsistent such a commission was with even the then known principles of both the laws and constitution of England, yet, had it been executed with fidelity, and liberal prices allowed to the planters for their tobacco, it would have operated as well for their benefit as for that of the monarch. If any thing could justify such an arbitrary proceeding as this royal monopoly, a slight recollection of the gross frauds and abuses which have been since long practised by many of the British merchants, to whom Virginia and Maryland planters had consigned their tobacco for sale, would tend much to reconcile the adoption of any measure, however tyrannical, which could bring such men to a sense of justice. Whoever has seen an “account of sales” of tobacco, sent by a London merchant to an humble planter in Maryland prior to the revolution, and perhaps indeed since, has very probably seen a commentary strongly illustrative and explanatory of the oppressions rehearsed in the foregoing commission. What operation the execution of this commission had in the colonies, whether pernicious or beneficial, we are not informed. As Charles’s prerogative was now far in the wain, it is not improbable, but that the commission died a natural death, and shortly became a dead letter.

An incident occurred this year among the colonists, which deserves some attention, inasmuch as it exhibits the state of religion as it then existed among them ; from which it appears, that although the greater number of the colonists are said to have been of the catholic religion, yet some few protestants, most of them probably of the inferior class, had also either first emigrated with the catholics, or had crept in among them from Virginia or some of the other colonies. A proclamation had been issued by the governor of Maryland, (but *when*, we are not informed, nor does such proclamation appear at large upon record,) to prohibit “all unseasonable disputations in point of religion, tending to the disturbance of the public peace and quiet of the colony, and to *the opening of faction in religion*.”—Capt. Cornwaleys, it seems, had some servants, who were of the pro-

CHAP. I.
1638.

The state
of religion
among the
colonists.

* See this commission at large in note (XIX.) at the end of this volume.

CHAP. I. testant religion. They lived or lodged in the same house with
1638. a certain William Lewis, who appears to have been a zealous papist, and under whose charge and government these servants were. It happened, that Francis Gray and Robert Sedgrave, two of these protestant servants of Capt. Cornwaleys, were reading "Mr. Smith's Sermons," a protestant work. While they were reading the book aloud, William Lewis came into the room, and supposing that they read it aloud for him to hear, particularly some offensive passages in it, as—"that the pope was anti-christ, and the jesuits anti-christian ministers," &c. he told them, "that it was a falsehood, and came from the devil, as all lies did, and that he that writ it was an instrument of the devil, and he would prove it; and that all protestant ministers were the ministers of the devil," and forbade them from reading that book any more. Whether these servants obeyed him on this occasion, or not, does not appear; but the conduct of Lewis, it seems, excited in them so much discontent, as to induce them to prepare a petition, intended, as afterwards alleged by William Lewis, to be presented by them to Sir John Harvey, governor of Virginia, as soon as they had procured the signatures to it of all the protestants in Maryland, the governor of Virginia being a protestant, and the church of England the prevailing religion there. The servants denied this intention, but acknowledged that the petition was to have been presented to the governor and council of Maryland. The purport of the petition was, to complain against William Lewis for his abuse of protestant ministers, and his refusal to permit them either to keep or read, in his house, any book which appertained to their religion. But before they had an opportunity of either procuring the signatures of the protestants or presenting the petition, William Lewis (on the first of July, 1638,) gave information thereof to Capt. Cornwaleys, who, immediately calling in Mr. Secretary Lewger to his assistance, ordered the several parties, together with the witnesses, to be brought before them. The petition was delivered up to the captain, and after an examination of the parties, they were bound in a recognizance with two sureties to answer the matter at the next court. The *court*, (composed, as it appears, of the governor, capt. Cornwaleys, and Mr. Secretary Lewger,) meeting on the third of July, the sheriff was commanded by warrant from the governor, to bring William Lewis, Robert Sedgrave, Francis Gray, Christopher Carnoll, and Ellis Beach,

before the court. After an examination of the parties and one witness, (a protestant,) the governor thought it proper, on account of the absence of another material witness to defer the trial and "censure" of the servants, till the witness could be produced in court; but desired the secretary to deliver his "censure"* touching the complaint against William Lewis.

The secretary gave it as his opinion, that for his (Lewis's) "offensive speeches and unseasonable disputations in point of religion, contrary to a public proclamation to prohibit all such disputes," he (William Lewis,) should be fined 500lb. tobacco, and remain in the sheriff's custody until he found sufficient sureties for his good behaviour in time to come. Capt. Cornwaleys was for the fine, but not for binding him to his good behaviour. But the governor concurred wholly in the sentence of the secretary. And so the court broke up, and William Lewis was committed to the custody of the sheriff; but he afterwards found security for the peace. What was the event of the accusation against the servants, our records do not inform us. If the charge was true, that they intended to prefer their petition to the governor of Virginia, it is certain, that such conduct wore very much the aspect of the *political* crime, called sedition.†

As these proceedings took place before the highest tribunal of the province, composed of the three first officers in the government, they amply develope the course of conduct, with respect to religion, which those, in whose hands the government of the province was placed, had resolved to pursue. Whatever

* The word "censure" means here,—the speech of the judge in giving his judgment in any criminal case. It was a word used in that sense about this time, as will be seen in the laws of the next session of the assembly.

It occurs frequently in Shakspeare's Plays; as for instance in Measure for Measure, (Act I, scene v.)

"*Joab.* Doth he so seek his life?

Lucio. Has *censur'd* him

Already; and, as I hear, the provost hath

A warrant for his execution."—

So, in Othello:

"—— to you, lord governor

—Remains the *censure* of this hellish villain."

So in the Winter's Tale,

"How blest am I,

In my just censure! in my true opinion!"

Mr. *Malone*, in his annotation on this last passage remarks,—"*Censure*, in the time of our author, was generally used (as in this instance,) for judgment, opinion."

† See a full copy of the *record* of the proceedings in this case, in note (XX.) at the end of this volume.

CHAP. I. opinion the reader may entertain of the equity and justice of the foregoing decision, (which, considering all the circumstances attending the settlement of the colony, seems to bear rather hard upon the catholics,) he will readily acknowledge an impartiality of conduct therein, (perhaps, a sacrifice of personal feeling,) which reflects much honour on the governor and his associates on this occasion. When we compare such proceedings with those of the times of queen Mary, we can scarcely believe, that our colonists were of the same sect of christians as those who ruled in England. The oppressions, however, which their sect had since experienced in that country, had probably by this time taught them a lesson of toleration, which they were now anxious, as soon as occasion offered, to exhibit as an example to others. As the puritans, their most inveterate enemy, were now gaining in a rapid manner the ascendancy of power in the councils of the mother country, our colonists, with a prudent policy, cautiously checked even the least sentiment, that might be thought to indicate a wish to revive in this remote wilderness of America the ancient severities of their church.

The nature of the administration of justice in the province.

This judicial exercise of power by the governor and council leads us to a short inquiry into the nature of the administration of justice, as it existed at this early period of time in our infant colony, prior to those legislative arrangements in that respect, which will next in order claim our attention. It will be recollected, that by the *ordinance*, (or commission,) of the lord proprietary, bearing date the 15th of April, 1637, before mentioned,* he constituted his brother Leonard Calvert, not only "lieutenant-general, admiral, chief captain and commander as well by sea as land of his province of Maryland," but also, "his chancellor, chief justice, and chief magistrate within his said province, until he or his heirs should signify the contrary under his hand and seal; and gave him power also, "to appoint and constitute from time to time officers and ministers for the preservation of the peace, administration and execution of justice;" and granted him also "full power and authority to inquire and determine and finally to judge of and upon all causes *criminal* whatsoever, (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgement; and also to hear and determine all *civil* causes whatsoever, concerning any goods, chat-

* See note (VI.) before referred to, at the end of this volume.

tels, contracts, debts, demands, or other personal or mixt actions CHAP. I.
 both in law and equity, in the most summary and equal way that 1638.
 he may, according to the orders, laws, and statutes of that our
 said province already made and established or hereafter to be
 made or established, and in default of such laws established or
 to be established within our said province, then according to the
 laws and statutes of the realm of England or as near as he may
 or can determine thereof; and where the *life, member, or free-*
hold of any person or persons shall happen to come into ques-
 tion within our said province, we do hereby give and grant to
 him our said lieutenant *and to such persons* as we shall from time
 to time by our letters or any other warrant under our hand and
 seal nominate and appoint to be *of our council* within the said
 province, or to any three of them, whereof our said lieutenant al-
 ways to be one, full power and authority to inquire and determine
 thereof according to the laws of our said province established
 or to be established, and finally to give sentence and judgment
 thereupon, and to award execution accordingly." By a clause
 in this ordinance also, immediately preceding the grant of the
 before mentioned judicial powers to the lieutenant-general, the
 appointment of a council was thus expressed:—"And *for the bet-*
ter assistance of him our lieutenant in the execution of the pre-
 mises and *of the charge by us committed to him*, we have appointed
 and ordained, and by these presents do appoint and ordain our
 well beloved Jerome Hawley, esqr., Thomas Cornwaleys, esqr.,
 and John Lewger, gent., to be of our council of and within our
 said province, *with whom our said lieutenant shall from time to*
time advise, as he shall see cause, upon all occasions concerning
 the good of our said province, and of the people there."

From this part of the governor's commission, it appears, that
 he was created *sole* judge of the supreme court of justice of the
 province in most cases, either *criminal* or *civil*, that could arise
 within the province; with this exception in *civil* cases, that
 where the *freehold* of any person came in question, he was to call
 in to his assistance any two at least of his council; and so in
 like manner in *criminal* cases where the *life* or *member* of any
 person should come in question. It is probable, however, that
 the governor, as he was directed by the preceding clause,—“to
 advise with his council from time to time, as he should see cause,
upon all occasions concerning the good of the province,” usually
 called in to his assistance, when holding his court, some of his

CHAP. I. councillors, on other occasions than where he was expressly so
 1638. required to do; of which the proceedings in *Lewis's* case, just before stated, seem to afford an example. As the whole province, exclusive of the isle of Kent, consisted, at this period of time, only of one county, called St. Mary's county, which, (although no actual limits were as yet assigned to it,) had been organized for the purposes of the preservation of the peace by the appointment of justices of the peace and constables of hundreds therein, it appears, that the governor and council retained within their jurisdiction, whilst sitting as judges of the supreme court of the province, all the powers and duties which were subsequently vested in any one county court. The small number of suits or actions, which could possibly arise in a population of about three hundred persons at the most, seems to justify this reservation of power by the governor.* It may here be observed also, that as we do not discover in our records, any commission or act of assembly, made expressly for the erection of the supreme court of the province, subsequently, and perhaps at this time, called "the provincial court," this supreme court, composed of the governor and council, acquired by *common usage* the appellation of "the provincial court,"—possessing *original* jurisdiction in all cases arising within the province, except where the special jurisdiction given to the court on the isle of Kent precluded but an *appellate* jurisdiction even from that court.

As a small population of Virginians had taken place on the isle of Kent, prior to the arrival of the Maryland colony, who were in time reduced by force to the lord Baltimore's jurisdiction, and that territory being at some distance from the seat of government at St. Mary's, it became necessary to make a distinct provision for the administration of justice in that portion of the province. This was done, as we have before seen, by a commission to captain George Evelyn, bearing date the 30th of December, 1637, "giving him power to call a court or courts, and in the said courts to hold pleas in *civil* cases not exceeding £10 sterling, and jurisdiction in *criminal* cases over all offences, which may be heard by justices of peace in their sessions in

* In analogy to this it appears, that until the year 1622, the governor and council in Virginia formed the only court of justice in that province, and all cases and suits were heard and determined by them as judges. Inferior courts in the nature of quarter sessions of England, were first instituted in that province by their assembly of that year, and called *county courts*. See *Beverley's Hist. of Virg. B. I. sect. 45. Keith's Hist. of Virg. p. 136, and Burk's Hist. of Virg. vol. 1, p. 223, 231.*

England, not extending to life or member.”* In a little more than a month afterwards, however, on the 9th of February, 1637, (1638, N. S.) we perceive the commission to certain gentlemen, as before mentioned, “to be justices of peace within the said island, to hold a *court-leet* in all *civil* actions not exceeding 1200 *lbs.* tobacco, and to hear and determine all offences *criminal* within the said island, which may be determined by any justice of the peace in England, not extending to the loss of life or member.”† But it appears, that subsequently, towards the latter end of the year 1638, this commission for a *court-leet* on the isle of Kent was superseded by the following commission, vesting both the *civil* and *criminal* jurisdiction of the island in the *commander* thereof. This last mentioned commission was issued on the 22d of April, 1638, to William Brainthwayte, appointing him “commander of the isle of Kent in all matters of warfare by sea and land necessary to the resistance of the enemy or suppression of mutinies and insolencies;‡ and, in all matters *civil* and *criminal* to use and exercise all or any jurisdiction and authority for the administration of justice and conservation of our peace within the said island as any justice of peace in England may or ought to use and exercise by virtue of his commission for the peace, and further (as there shall be cause,) to hold a court or courts, and in the said courts to award process, hold pleas, and to hear and finally determine all actions and causes whatsoever *civil* happening and arising between any the inhabitants of the said island not exceeding in damages or demands to the value of *one thousand weight of tobacco*, as also to hear and finally determine all misdemeanors and offences whatsoever *criminal* happening or committed within the said island, and to award execution thereupon, so that the said crimes extended not to the questioning of any one for his life or member, and all matters and causes whatsoever aforesaid to hear and determine in the most summary or equal way that he may§ according

* See this commission stated more at large before, in p. 43, 44.

† See before, p. 39, note.—Immediately following this commission, as it is on our records, there is subjoined the following note:—“Commission of sheriff and coroner of the same island to John Langford, *ut supra*.”

‡ This commission omits the clause, which was in that to captain Evelyn of the 30th of December, 1637,—“authorising him to elect and choose six of the inhabitants of Kent for his council.”—Perhaps for reasons which will appear in the next commission to Mr. Brainthwayte, it was supposed by the governor, that a greater latitude of trust might be reposed in him than in Evelyn.

§ This expression—“summary or equal way,” (which is also in the commission to the governor, of the 15th of April, 1637, just before cited,) seems to have

CHAP. I. to the laws of this province* established or to be established, 1638. (after publication thereof in the said island,) and in default thereof then according to the laws of England† as near as he shall be able to judge; and further to elect and appoint all necessary officers for the execution of justice and of the authority hereby committed unto him, with allowance of such reasonable fees as are usually belonging to such officers."

Notwithstanding the establishment of these judiciary tribunals on the isle of Kent, yet it evidently appears, from *the limitation of their powers*, that the court of St. Mary's, composed of the governor and council, by virtue of the before mentioned ordinance, would be considered as the *supreme* court of the province, and might properly be called "the provincial court," (as it afterwards was,) retaining *original* jurisdiction in all *civil* cases arising even on the isle of Kent, (that island "being of right a member of the province," as the before mentioned commission to Evelyn expresses it,) which should exceed 1000 lbs. tobacco, and in all *criminal* cases arising there also, where the punishment of the crime might extend to life or member; and, as we may presume, an *appellate* jurisdiction in all *civil* cases cognizable in the court of the isle of Kent. But, for some reasons not expressed in the records, this *appellate* jurisdiction seems to have been taken away by a subsequent commission to William Brainthwayte, bearing date the 21st of December, 1638, confirming the powers before granted to him, and further amplifying and enlarging them,‡ and moreover giving to him this

authorised *summary proceedings*, (contrary to the common law,) to be used in the courts of justice. It is certain, that in some of the county courts, on their first establishment, (particularly in Talbot county court, among its first proceedings between the years 1663 and 1670,) it was the practice for a plaintiff in a *civil* case for debt to proceed in the first instance by way of *petition* and *subpœna*, instead of a *writ* and *declaration*.

* This expression, wherever it occurs in our records almost invariably means, *acts of assembly* of this province, in contradistinction to the *common* and *statute* laws of England, which, strictly speaking, were [also laws of this province, except perhaps in *criminal* cases extending to the loss of life or member.

† This proviso—"in default of the laws of the province, then according to the laws of England,"—pervades most of the early *judicial* commissions of the province, introduced most probably in pursuance of the seventh section of the charter, which concludes—"so nevertheless, that the laws aforesaid," (to wit, the acts of assembly,) "be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be,) agreeable to the laws, statutes, customs, and rights of this our kingdom of England."

‡ In this second commission it is expressed, by way of preamble,—“Whereas by our commission, &c. we did appoint our dear kinsman, William Brainthwayte,

second commission—"full power and authority by a precept under his hand to summon or warn any person being within our said island to answer to any matter or suit, *civil* or *criminal*, and to hear and determine all suits of debts of what value or demand soever the same shall be, and if any person shall be convicted of any debt either to ourself* or any other by the confession and acknowledgment of the party himself, or by the verdict of such as shall try the matter, to avoid execution for all such several sums by a precept under the hand of the said William Brainthwayte, which precept, we do hereby appoint, shall be a sufficient warrant to the sheriff of our island to levy the said several sums contained in the precept of execution either by distress and sale of the goods of the party against whom the execution shall be awarded, or otherwise by imprisonment of his person as the said precept shall direct."†

A few remarks may be here added, in particular reference to the administration of justice in St. Mary's. Although Mr. Lewger was one of the council, as well as secretary of the province, yet for the further organization of the county of St. Mary's, the governor, early in the year 1638, (January 24th, 1637, old style,) issued a commission, wherein he appointed him "conservator of the peace within the county of St. Mary's, with such powers as are usually exercised and executed by any justice of peace in England;" and in the same commission appointed him also—"commissioner in causes testamentary to prove the last wills and testaments of persons deceased, and to grant letters of administration." It is probable, that the bill entitled, "a bill for the probate of wills," passed at the session of assembly before mentioned, begun and held on the 25th of January, 1637, (1638, N. S.) the day after the date of the above commission, was intended to make further provision relative to the above mentioned office of commissioner, (or commissary) "in causes testamentary." It would appear, however, that the governor and council, subsequently to the commission, acted as

gentleman, to be *commander*, &c."—From whence, supposing him to be a near relation of lord Baltimore, we may infer, that the almost unlimited power, about to be vested in him by this commission, was more readily granted, and it will probably account also for the omission of appointing a council for him as was done in that to captain Evelyn, as before mentioned.

* That is, of debts to the lord proprietary, in whose name the commission runs.

† See these two last mentioned commissions to William Brainthwayte, in the "Council Proceedings from 1636 to 1657," pp. 32 and 33.

CHAP. I. an ecclesiastical court, by granting letters testamentary on last
 1638. wills in several cases;* but it is possible, that Mr. Lewger's commission might be intended to create him only a *ministerial* officer, as a deputy-commissary was, prior to our revolution, while the *judicial* cognizance of testamentary causes, in controverted cases, might still remain in the highest tribunal,—the governor and council.

These appear to be the first proceedings, now extant on our records, in the regular arrangement of courts and officers for the administration of justice in those two distinct parts of the province, which had been as yet settled by Europeans. The paucity of inhabitants, and consequently of suits or actions at law, will possibly reconcile, what at first appearance strikes us at this day as too large a monopoly or reservation of *judicial* power in the hands of the chief executive magistrate. But, in justice to the memory of those, in whom the supreme power of the province, both executive and judicial, had been hitherto vested, from the first landing of the colony in March, 1634, to the close of the year 1638, a period of almost five years, it ought to be remarked, that it would be difficult to find on our records a single instance of an arbitrary or wanton exercise of such power on either the persons or property of any one individual.

* See, in the "Council Proceedings, from 1637 to 1644,"—Letters testamentary on the last will and testament of Mr. John Saunders, granted by the court, (the governor and council,) to Thomas Cornwaleys, esq. on the 12th February, 1637, (1638, N. S.) and in another instance on William Smith's estate. This appears to be the same court as that before which the bills of indictment were found against William Clayborne and Thomas Smith, and which is there called a county court, held before the lieutenant-general, captain Robert Wintour, and Mr. John Lewger. A Mr. Jerome Hawley appears to have been a man held in high estimation in the province, at its first settlement, having been always the first named of the council; it may be proper here to mention his death, which happened about midsummer in the year 1638. In the same record-book, just mentioned, there is a memorandum made of the granting administration on Mr. Jerome Hawley's estate to captain Cornwaleys, August 2d, 1638. From which book it also appears, that he left a widow, but no children.

CHAPTER II.

Lord Baltimore assents to the right of the assembly to originate laws—An assembly of the province called—Their proceedings—The constitutional act for establishing the house of assembly—The house sit as a court of justice, and adjudge several cases civil and criminal—The general act, ordaining certain laws for the government, to wit, for securing the rights of holy church—for prescribing an oath of allegiance to his majesty—for securing the rights and prerogatives of the lord proprietary—for securing the rights and liberties of the people—for the better administration of justice and conservation of the peace—Some particular laws for the punishment of crimes—as for treasons, felonies, and enormous offences—Laws for erecting courts of justice—A court of admiralty—County courts—Court of chancery—A pretorial court—The authority and jurisdiction of justices of peace—the particular offences under their cognizance—Inferior executive officers—The administration of justice in the isle of Kent more particularly regulated—Oaths of office prescribed—Officers for the probate of wills and granting administration—Military discipline—Payment of officers' fees and public charges provided for—Derelict property, directions concerning it—A short insolvent law—The planting of tobacco and Indian corn regulated—Weights and measures—Customs or duties on the exportation of tobacco—The constitution of the general assembly more specially provided for—The duration of commissions in case of the death of the lord proprietary—A water mill and a town house the building of them directed—Other bills of this session not recognised in the general act, as—the act for descending of lands—for assuring of titles to land—for enrolling of grants—Also, for peopling of the province, and for limiting the times of servants.

Although it was not expressly prescribed by the charter of CHAP. II. Maryland, that the colonists under it should be entitled after 1639. their emigration to the benefits and protection of the *common law* of England, or that that system of jurisprudence should be the code by which they were to be governed, yet the clauses at the end of the seventh and eighth sections of that instrument of grant seem to imply strong inferences, that such colonists should be so entitled, or were to be so governed. Indeed, the common law principle, that the English laws were the birth right of every English subject, necessarily drew the inference,—“that such colonists would carry with them so much of the English law, as was applicable to their own situation and the condition of an infant colony.”* This seems to have been the practical construction of the charter in the colony of Maryland from the time of its first emigration to the declaration of its independence.

* 1 Bl. Com. 107.

CHAP. II. Hence, therefore, in the "declaration of rights" prefixed to their
 1639. new constitution, after that event, they declared—"That the inhabitants of Maryland are entitled to the "common law of England, and to the benefit of such of the English statutes as existed at the time of their first emigration."

Agreeably to these principles it will appear from the events detailed in the foregoing chapter, that, notwithstanding the *disassent* of the lord proprietary to the laws enacted by the two preceding provincial assemblies, and the *rejection* also, by the last assembly, of the laws framed and sent in by the lord proprietary himself, and notwithstanding some doubt seems to have been expressed by some of the members of the last assembly with respect to the adoption of the laws of England for their government, yet the whole of their proceedings, both legislative and judicial, were evidently predicated and founded upon the English system of jurisprudence. But it will be obvious, upon the least reflection, that the situation of this infant colony in Maryland necessarily demanded many local regulations, peculiarly adapted to their own circumstances, and not provided for by the municipal code of the mother country.—The lord proprietary, it seems, saw this in its proper point of view; and, with a noble generosity, which does lasting honour to his memory, overlooked the indignity offered to him by the rejection of the laws proposed by him, and yielded to the freemen of the province themselves, the right of propounding the laws to be enacted. For this purpose the following letter, (or commission,) was sent by him from England to his brother the governor.

Lord Baltimore assents to the right of the assembly to originate laws.

"DEAR BROTHER,—I do hereby give you full power and authority from time to time in every general assembly summoned by you in the province of Maryland, in my name to give assent unto such laws as you shall think fit and necessary for the good government of the said province of Maryland, and which shall be consented unto and approved of by the freemen of that province or the major part of them, or their deputies assembled by you there from time to time for the enacting of laws within that province; Provided that the said laws, so to be assented unto, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law, so to be assented unto by you in my name, and consented unto and approved of by the freemen aforesaid, I do hereby declare shall be in force within the said province, till I or my heirs shall signify mine or

their disassent thereto, under the great seal of the said province, and no longer, unless, after the transmission thereof unto us, and due consideration had thereupon, I or my heirs shall think fit to confirm the same. Given under my hand and seal at London in the realm of England, the 21st of August, 1638. CHAP. II.
1639.

C. BALTIMORE.*

To my dear brother Mr. LEONARD CALVERT esq.

my lieutenant general of the province of Maryland."

Although this letter does not in *express words* conceded to every member of the assembly a right of propounding any law, which he may deem proper to be passed by the house, yet the expressions therein, which authorise the governor "to *give assent* unto such laws as he should think fit and necessary," strongly imply, that laws might be proposed in the house by other persons than the governor himself. It is probable, indeed, that the practice was, during many of the first sessions of assembly next after the first settlement of the colony, for the secretary of the province, who appears to have been always a member of the house, to make draughts of and bring in, all such bills, as should be thought "fit and necessary," he being, perhaps, the best lawyer and most capable of such a task. It is evident, however, from the practice of the last session before mentioned, where bills had been brought into the house by a committee specially appointed for that purpose, as we have before seen, that the members of the house were fully aware of this their right; and might occasionally have exercised it, although it does not appear upon the journal of the next session, that any such committee was during that session appointed.

The constitutional principles, therefore, acceded to by the lord proprietary and established by this letter, seem to have been, that the freemen in assembly met might originate and pass "such laws as they should think fit and necessary for the good government of the said province," subject to the *assent* or *disassent* of the *governor* in the name of the lord proprietary, and subject also to the constitutional proviso of the charter, "that the said laws be, as near as conveniently may be, agreeable and not contrary to the laws of England;" but at the same time if the lord proprietary should subsequently disassent to any such laws, that they should then cease to be considered as laws, and no longer binding on the inhabitants of the province; that is, that laws

* See "Assembly Proceedings from 1637 to 1658," p. 36.

CHAP. II. passed by the house of assembly and receiving the governor's
 1639. assent should be deemed and acted under as laws, until the lord
 proprietary signified his disassent thereto.

However inconvenient it might be, that the lord proprietary, when resident at so great a distance from his province, should reserve to himself a final negative upon the laws proposed to be passed, yet it will be acknowledged, that the right hereby acquired by the freemen of the province of originating such laws for themselves, as they should think fit, was a most important corner-stone in the foundation of their provincial liberties. This judicious concession of lord Cecilius might well be considered as an earnest of those repeated acts of generosity, which subsequently acquired to him the appellation of—"the father of his province." Fortunate had it been, indeed, for his sovereign, could he have copied from his noble subject so excellent an example of prudent caution in yielding in time even what he deemed to be his just right and prerogative; and fortunate also, we may say, would it have been, if not for Americans at least for the English nation, had the present monarch of that throne exercised equal wisdom and moderation in retracting in due season measures manifestly obnoxious to his American people.

An assembly of the province called.

In pursuance of the foregoing authority from the lord proprietary, and under the influence of the urgent necessity of the measure, the governor immediately formed the resolution of calling an assembly of the province. As the isle of Kent was the most distant part of the province then inhabited, it became necessary to give a more early intimation thereof to the inhabitants there settled. The governor accordingly issued his *writ* to the commander of that island for the purpose of causing "deputies or burgesses" to be chosen to represent that district. But, as the proceedings in relation to and during the holding of this assembly about to be convened, exhibit the establishment of constitutional principles, which pervaded the provincial form of government during its existence, it is deemed to be proper to insert them here more in detail than would otherwise be necessary or admissible. The documents appertaining thereto could not be condensed by abridgment into much less space, than they originally occupy. The writ of election to the isle of Kent is as follows:

"After my hearty commendations, &c., Whereas I have appointed to hold a general assembly at St. Mary's, on the 12th

day of February next, there to advise and consult upon the enacting of laws and other serious affairs of the province, These are therefore to will and require you, at some convenient time, when you shall think fit, after the receipt of these letters, to assemble at Kent-fort* all the freemen inhabiting within the isle of Kent, and then and there to propose to the said freemen to choose from amongst themselves two or more discreet honest men to be their deputies or burgesses during the next assembly according to the form of an instrument which I herewith send unto you, to which instrument all the said freemen are to set their hands, and if they agree not in the election, then you are to return upon the instrument the names of such two or more persons upon whom the major part of the freemen so assembled shall consent, and you shall require the freemen so assembled to agree upon a certain contribution for the defraying of the charges which such burgesses shall sustain by the repairing to the assembly, and together with them you shall return hither the instrument of their election, signed as is appointed aforesaid; for so doing this shall be your warrant.—Given at St. Mary's, this 21st December, 1638.

CHAP. II.

1639.

To my loving kinsman, WILLIAM BRAINTHWAYTE."

Although the rules of the common law of England were evidently adopted as the principles which were to direct the proceedings of the provincial government, whether legislative or judicial, and by that law the writs of summons to parliament ought properly to be directed to the sheriffs of the shires or counties, who, in case of a city or borough within his county, delivers his precept for that purpose to the proper officer of such city or borough, yet inasmuch as the province was not yet divided into counties, although the district encircling the city of St. Mary's was so denominated, and consisted of several *hundreds*, as legal divisions thereof, it was deemed by the executive proper, that the elections for members of the assembly should be held in and for the several and respective hundreds, as well as

* From the description of the *manor of Kent-fort*, granted to Giles Brent, September 7th, 1640, this *fort* must have been situated on that part of Kent island which borders on what is called the Eastern bay, and, as the manor was located so as to comprehend the neck of land commonly called Kent point, and to contain a thousand acres, the *fort*, being parcel thereof, was most probably situated on the first navigable creek lying on the left hand in ascending the Eastern bay after passing Kent point; and most of the first settlements on that island, were probably made adjacent or near to that fort.

CHAP. II. in the anomalous district of the isle of Kent. This measure was
 1639. probably suggested, partly by the paucity of the population of the country, and partly by the ease and convenience of the inhabitants. As the isle of Kent differed from any other part of the province then inhabited, in having a *deputy* of the governor, under the denomination of a *commander*, to preside over it, the writ of election for that district was necessarily directed to him. But the writs of election, which issued to the several and respective hundreds of the province, which were adjacent to the city of St. Mary's, were directed to some of the principal inhabitants, therein named, of each hundred. That for the hundred of Mattapanient is here inserted at large by way of exemplification of the others.

"Cecilius, lord proprietary, &c. to our trusty Richard Garnett, senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman, and any other the freemen inhabiting at Mattapanient, greeting,—Whereas we have appointed to hold a general assembly of the freemen of our province at our fort of St. Mary's, on the five and twentieth day of this instant month of February, these are, therefore, to will and require you, that tomorrow or on Thursday next at the furthest, between one and two of the clock in the afternoon you and every one of you be at our secretary's house at St. John's, there to make such nomination and election of your burgesses for that manor or division of Mattapanient* for the next assembly, as you shall think fit: hereof fail not at your peril. Given at St. Mary's, this 11th of February, 1638."

The like summonses were issued to each of the other hundreds, (*singula singulis*,) and directed to some of the principal inhabitants thereof in like manner.†

To these several summonses regular *returns* in writing were

* Although the division or election district of Mattapanient is here spoken of as a *manor* and not a *hundred*, yet in the *return*, as will be presently seen, it is called "the *hundred* of Mattapanient."

† The only writ of summons, which is recorded at large in the record, is that to Mattapanient, as above.—The rest are shortly noted, as,—“The like summons to all the freemen of St. Michael's hundred to meet the secretary at St. Inigoe's house on Monday the 18th of February.

“The like summons to all the freemen of St. Mary's hundred to be at the secretary's house on Tuesday the 19th of February.

“The like summons to all the freemen of St. George's hundred to meet the secretary at the house where captain Fleete lately dwelt, on Thursday the 21st of February.”

made by the secretary, (Mr. Lewger,) before whom the elections were to be held, as may be perceived from the tenor of the writs of summons. The return from Mattapanient hundred is as follows: CHAP. II.
1639.

“14th February, 1638.—Mem’d that this day came before me,* Richard Garnett, senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman, and Robert Wiseman, and chose for the burgess of the hundred of Mattapanient, Henry Bishop, and have given unto him full and free power for them and for every of them to be present in their names at the next assembly as their burgess or deputy, and in witness thereof have hereunto set their hands.”

The like returns, (nearly *totidem verbis*,) were made for each of the other hundreds, to wit, St. Mary’s, St. Michael’s, and St. George’s; except, that in the returns for these three last mentioned hundreds, the delegated power was somewhat more fully expressed, as for instance, after the words—“burgess or deputy,” as above, was inserted—“and there to do and conclude in their names as a burgess may or ought to do.”

To these returns the names of the several persons therein mentioned appear to have been subscribed, such returns being somewhat in the nature of a warrant or power of attorney. It is remarkable, however, that although the above returns for Mattapanient is signed by seven persons, yet only one, to wit, Robert Wiseman, could write his name, the rest affixing their marks thereto; and out of fifteen names subscribed to that of St. Mary’s, seven of them made their marks. This gross deficiency in literature among our colonists is not, however, to be imputed to their colonial state. These persons, for the most part, were born and bred in England, and had left their country after the common period of acquiring literary attainments. It was the defect of the age in which they lived. Although the art of printing had tended much to diffuse literature among even the lowest classes of people in Europe, yet the fanaticism and superstition of religion had on all occasions conjointly thrown impediments in the way of the progress of learning.

The return from the isle of Kent was as follows:—

“Know all men by these presents, both present and to come, that we the freemen of the isle of Kent, whose names are here-

* It would appear that the secretary sat as judge of the elections, and therefore the return states, that the electors came “before him.”

CHAP. II. unto written, have elected and chosen our loving friend Nicholas
 1639. Brown, planter, to be our burgess or deputy, during the next general assembly at St. Mary's, summoned to begin on the 25th of February next, in our names to assent to all and only such things as our burgess shall think fit, thereby giving as free and full consent unto all laws and matters whatsoever, which within the said assembly shall be agreed and concluded of, as if we ourselves in person had consented thereunto.—In witness whereof, &c.”—Signed by twenty-four signatures.*

The like return, in the same words, and signed by the same persons, was separately made for Christopher Thomas, as the other burgess for the isle of Kent.

Besides writs of election so issued, and burgesses thereupon so returned elected, *writs of summons* were also issued to individual persons to appear and take their seats as members of the assembly in their own personal rights, somewhat in the manner of calling a commoner to the house of lords, (in England,) and promoting him to a peerage. It may be perceived from the proceedings of the last session, that every freeman of the province was considered as being entitled, in his own personal right, to a seat in the assembly. Hence it appeared to have been no extraordinary stretch of prerogative in the lord proprietary or his lieutenant general, to call “by special writ” any gentleman “of able judgment and quality”† to be a member of the house of assembly, besides, those elected by the people as their representatives. Although it does not appear from the records, yet it may be inferred, that such persons, so specially summoned by writ, did not give their votes in the election of burgesses or deputies, but retained their personal and individual right to a seat and a voice in the house, and might therefore with legal propriety be called to the assembly as members thereof. This appears to have been done in pursuance of a plan already arranged for

* Supposing these signatures to have been the names of all the male heads of families, then on the isle of Kent, as they most probably were, it would afford a tolerable *datum*, from which might be inferred the aggregate white population of that island at this period of time. Accounting five to a family, the usual computation, the population would amount to one hundred and twenty souls.

† The word “quality” here used was a word in common use in these times, as signifying men of the first rank in society under the degree of nobility, and synonymous to *gentry*. It is particularly so used by lord Clarendon, (in his *Hist. of the Rebellion*, p. 53, 103, fol. edit.) when speaking of the long parliament, in 1640, in removing from the house “many gentlemen” (members) “of good quality.”

new modelling the provincial constitution or form of government, CHAP. II.
and partially carried into execution during the session now about 1639.
to be held, as will presently be seen. The form of the *special writ* for that purpose was as follows :—

“Cecilius, lord proprietary, &c. to our dear friend and councillor Thomas Cornwaleys, Esq. greeting, whereas we have appointed to hold a general assembly of the freemen of our province, at our fort of St. Mary’s, on the 25th day of February next, we do therefore hereby will and require you, that all excuses and delays set apart, you repair in person to the said assembly at the time and place prefixed, there to advise and consult with us touching the important affairs of our province.— Given at St. Mary’s, the 18th of January, 1638.”

The like writs were issued severally to “Mr. Giles Brent, councillor, Mr. Fulk Brent, Mr. Thomas Greene, and Mr. John Boteler, gentlemen.”

Accordingly, on the day appointed, (on Monday the 25th of February, 1638,—1639, N. S.) the assembly met, at the Fort of St. Mary’s, when were present,—The lieutenant-general, Capt. Thomas Cornwaleys, Mr. Fulk Brent, Mr. Giles Brent, Mr. Secretary (Lewger,) Mr. Thomas Greene, and the following “delegates,” viz. Mr. Gerard and Mr. Gray, for St. Mary’s hundred, Mr. Wickliff and Mr. Revell for St. George’s, Mr. Canther and Mr. Price for St. Michael’s, Mr. Bishop for Mattapanient, and Mr. Thomas and Mr. Browne for the isle of Kent. Their proceedings.

It appears, that immediately after their assembling, “they removed the assembly to be held at St. John’s,” which was probably the mansion house of the manor of St. John’s, near the town of St. Mary’s, reserved for the use of the lord Baltimore or his lieutenant general.

The members being reassembled, and the governor and council, together with the gentlemen specially summoned, having taken their seats with the burgesses or delegates, the lord proprietary’s letter, herein before inserted, was read.

The first business, which appears to have been transacted in the house, (after reading the foregoing letter,) even prior to the formation of rules and orders, was the passing an act entitled, “an act for establishing the house of assembly, and the laws to be made therein;”—which was done “by the general consent of all the freemen and of the lieutenant general for the lord proprietary.”—The substance of this act was, that “the several persons The constitutional act for establishing the house of assembly.

CHAP II. elected and returned, (pursuant to the writs issued,) shall be
 1639. called burgesses, and supply the place of all the freemen consenting to such election, in the same manner and to all the same intents and purposes, as the burgesses in any borough in England, in the parliament of England, use to supply the place of the inhabitants of their respective boroughs. And that the gentlemen summoned by his lordship's special writ, to each of them directed, the said burgesses, and such other freemen who have not consented to any of the elections as aforesaid, as shall be at any time assembled, or any twelve or more of them, (whereof the lieutenant general and secretary to be always two) shall be called *the house of assembly*. And all acts, &c. assented unto and approved by the said house, or major part thereof, and afterwards assented unto by the lieutenant general, in the name of the lord proprietary, shall be adjudged and established for laws, to the same force, &c. as if his lordship and all the freemen of this province were personally present and did assent, &c."*

This act was manifestly framed prior to the meeting of the assembly, and, as its utility was evident to all, so it passed by unanimous consent. Although the intention of it was, to give some permanent form to the mode of exercising the legislative powers of the government, yet from the circumstance of its being the very first business of the house on assembling, as well as from its general tenor, it seems to have been intended also to act upon the proceedings of the present session, and not merely as a rule *in futuro* for succeeding legislatures. In confirmation of this supposition we find more explicit regulations on this subject in the next act, and in several bills, of this session. The charter had given to the lord proprietary "free, full and absolute power to ordain, make and enact laws, of and with the advice, assent, and approbation of *the freemen* of the province, or of *the greater part* of them, or of their *delegates* or *deputies*, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore and his heirs, and *in the form which shall seem best to him or them*."—From which it appears, that, although the *form*

* See the *title* of this act and the substance thereof stated in Bacon's laws, under 1638, ch. 1. From a minute in the journals, see "Assembly Proceedings from 1637 to 1658," p. 129,) it appears that this act received the governor's assent on the 25th of February, (the first day of the session,) and "was published under the great seal the 12th of March, 1638,"—1639, N. S.—See the act at large, as it is in the records, in note (XXI.) at the end of this volume.

or mode of calling or convening the assembly was left discretionary with the lord proprietary, yet the laws to be enacted must have the assent of a *majority* of all the freemen collected individually together, or of *their delegates*. But it is probable, that the population of the province had now increased so as to render it inconvenient for all the freemen to be present at an assembly. Hence, therefore, the act provided that delegates or deputies should supply the place of such freemen as could not attend, and that such delegates should be called *burgesses*, to the same intents and purposes as burgesses in the parliament of England," intending thereby, that the legislative branch of their government should be in close analogy to that of the parent country.* But notwithstanding this intention of moulding the legislative branch of the government into the *representative* form, yet the assembly appear to have proceeded in a cautious manner in depriving each individual freeman of what might be called his natural right, (though derivative also under the charter,) of assenting in person to all the laws, which were to be obligatory on him. They, therefore, provided, that "gentlemen summoned by his lordship's special writ, and *such other freemen, who have not* consented to any of the elections," should retain their right to a seat in the house. According to this provision, the first entry on the journal, next succeeding the passage of this law, is the following:—"Cuthbert Fenwick claimed a voice, as not assenting to the election of *St. Mary's* burgesses, and was admitted. Robert Clarke, *similiter*,"—in like manner. It seems to have been intended also by the last clause in this act to give some stability to the claim of the freemen of the province, in assembly met, of originating such laws as they should think fit,—a claim heretofore disputed by the lord proprietary, as before stated, but now apparently surrendered according to the terms of his letter just read to the house; and the expressions of the act moreover seem to imply, that the assent of the lieutenant general should bind the lord proprietary so as to take away the final negative of the latter to any laws, which might be passed in the assembly.

* As the Maryland colony borrowed many of its institutions, both civil and political, from her elder sister Virginia, the term *burgesses* might have been adopted in Maryland, in imitation of the like term in Virginia. At the time of the *first* assembly ever held in Virginia, [1619,] "the colony had been divided only into seven hundreds, or distinct settlements, which seem to have enjoyed some of the privileges of boroughs: And from this circumstance the democratic branch of the assembly has been called to this day, the house of burgesses." *Chalmers's Annals*, p. 43.

CHAP. II. But, as the final negative is expressly reserved in his lordship's
 1639. letter just read, and one of the bills of this session, "engrossed but not passed," entitled, "an act, what persons shall be called to every general assembly," has a special provision, in which his lordship's *disassent* is expressly reserved to him, this construction of the act could not be made.*

The house of assembly, having thus digested, as it were, a form of government for the province, proceeded next to frame rules and orders for the regulation of the house in their legislative proceedings. These rules were nearly the same as those adopted at the last session and before recited, except in one regulation relative to the mode of passing laws, which is as follows :

"After any bill hath been once read in the house, the bill shall be read [again two several times, and then]† engrossed, or utterly rejected; and upon any day or days appointed for a session, all bills engrossed shall be put to the question, and such as are assented to by the greater part of the house, (and if the votes be equal, that shall be judged the greater part, which hath the consent of the lieutenant general,) shall be undersigned by the secretary in these words,—the freemen have assented; and after that, the president shall be demanded his assent in the name of

* It is not improbable, that this prerogative of the lord proprietary, of his final assent or disassent to such laws as might be enacted by the assembly, even with the assent of his lieutenant general, was retained by him in imitation of the like principle in the form of government prescribed to Virginia in the year 1619, under an instrument for that purpose granted and sent to that colony from the treasurer and company in England, who were the *proprietaries* at that time of that colony. By that instrument, (under which sat the first general assembly ever held in that province,) it was provided,—“That no law or ordinance, though approved of by all the three members of the legislature, was to be in force, until it was ratified in England by a general court of the company, and returned under its seal; and on the contrary, that no order of the general court should bind the colony till assented to by the assembly.” *Chalmers's Annals*, p. 54, who cites the Appendix to Stith's *Hist. of Virg.* See also Robertson's *Hist. of Amer.* vol. 4, p. 211; and Burk's *Hist. of Virg.* vol. 1, p. 204. The lord Baltimore might rationally suppose, that he had as much right to a *final* assent or disassent to the laws of his colony, as the Virginia company had to theirs. This duplicate negative, first in the lieutenant governor, and secondly in the king, has always existed in most of the British colonial governments immediately under the crown; and in a palatinate government, as that of Maryland, the lord proprietary would succeed to the prerogative of the king.—See *Edwards's Hist. of the West Ind.* B. vi. ch. 2.

† The space occupied by the words included within the brackets as above, is blank in the record; but I have ventured to fill it up to complete the sense of it, as I have supposed it to be.

the lord proprietary, and if his assent be to the bill, the bill shall be undersigned by the said secretary in these words,—the lord proprietary willeth, that this be a law.”* CHAP. II.
1639.

Another slight variance between the rules of the present session and the last was in the exercise of their compulsory power in obliging their members to a more punctual attendance; the principle of which might, perhaps, with propriety be adopted by modern legislative bodies.—“If any gentleman or burgess doth not appear upon call, at such time as the president is set at or after either of the said hours,” (before appointed,) “he shall be amerced 20 *lb.* of tobacco, to be forthwith paid to the use of the house.”†

The remainder of this first day of the session appears to have been principally occupied in reading for the first time several bills apparently calculated for the better regulation of the affairs of the province. The house then adjourned until Thursday the 28th of February, thereby leaving an intervention of two days, probably with a view of giving time for the preparation of other bills.

On the day appointed, (Thursday, 28th of February,) the house met, and, after several other bills were read, they proceeded to the exercise of their *judicial* powers, in hearing two several causes, one a *civil* case for debt, and the other a *criminal* one. The following entry on the journal relates to the first. “Then was heard a cause between Richard Loe and Reinold Fleete, and was adjudged by the major part, that the defendant should pay the plaintiff 30 *lb.* of *beaver* for his whole demand.”‡ The other, a *criminal* case, seems to be of such importance as to demand some notice; inasmuch as it has been said to have been acted on by the house on the same principle of necessity as in the case of

* Thus in England the royal assent is given in these words,—“*Le Roy le veut*, the king wills it.”

† Agreeably to this rule two entries appear on the journal, thus,—“The captain,” (Cornwaleys,) “amerced 20*lb.* tobacco for tardie.” Mr. Giles Brent and Mr. Greene also.—Although a statute was made in the reign of Richard the second, [5 *Rich.* 2, ch. 4,] to compel the attendance of members of parliament, yet it is plain, from the expressions of the statute, that it was *declaratory* of the common law. “If any person summoned to parliament, do absent himself, he shall be amerced, and otherwise punished according as of *old times* hath been used to be done within the said realm in the said case.”—4 *Inst.* 43.

‡ Another *civil* cause was heard and determined by the assembly on a subsequent day, between captain Cornwaleys and Thomas Morris on a contract for rent.

CHAP. II. Thomas Smith in the last session.* It is thus mentioned in the
 1639. journal. "The sheriff was warned," (in the morning,) "to bring into the court in the afternoon the body of John Richardson, and to warn William Brough to give in evidence. In the afternoon;—then was called John Richardson, and charged with flight and carrying away of goods unlawfully from his master, and found guilty by the whole house, and adjudged by the house to be whipped three several times." This sentence, however, did not pass unanimously. Mr. Greene voted for him "to be hanged." Mr. Giles Brent and Mr. Fulk Brent—"to be whipped very severely." "The *captain*," (by whom was meant captain Cornwaleys, and who is often distinguished in the early part of the records of the province by that appellation,) voted for him "to be whipped, provided that he was sorrowful for his fault." "The President," (governor Calvert,) "to be laid in irons, and whipped three several times severely." Which last opinion seems to have prevailed, according to the terms of the sentence as above.

Although many bills were brought forward at this session with an intention of providing in a distinct and separate manner for the various exigencies of the province; yet it appears, that these bills did not receive the final assent of the house, and were never completely enacted into laws.† What causes operated to prevent the final passage of these bills, we are no where informed, nor is it easy to substitute any conjecture of them. On the last day of the session, however, a law was finally passed, which seems to have been intended to comprehend the substance of most of these bills, which had been thus introduced into the house, but not finally passed. The title of the act was sufficiently comprehensive for that purpose, being entitled, "An act ordaining certain laws for the government of this province," which act, by a comparison with these bills, evidently appears to have been intended as an abridgment of them. The title of this act also, indicates that the "laws" to be "ordained" were these bills, most of which are but amplifications of the several different sections of the act.

* See the "*Memorandum*" in Bacon's laws at the end of his list of the bills of this session; 1638, ch. 2.

† The following entry, relative to these bills, appears on the journal of the house;—"Memorandum, That these bills were ingrossed to be read the third time, but were never read nor passed the house. John Lewger."—After which, in the same record book, follow all the thirty-six bills at large.

The caption of the act, 1638, ch. ii., passed 19th of March, 1638, (O. S.) according to the record of it,* is as follows: CHAP. II.

“At a session of general assembly at St. Maries, on the 19th of March, 1638, to the honour of God and the welfare of this province was enacted as followeth: 1639.
The general act “for ordaining certain laws for the government of the province,” stated, with comments thereon.

“An act ordaining certain laws for the government of this province.

“For the better government of this province, be it enacted and ordained by the lord proprietarie of the same, of and with the advice, assent and approbation of all the freemen and burgesses in this present assembly in manner and form following:

“*Sect. (1.)*† Holy church within this province shall have all her rights and liberties.” First, for securing the rights of the church.

Among the bills just mentioned, introduced into the house at this session, was a very short one, entitled, “An act for church liberties,” and was expressed nearly in the following words,—“Holy church within this province shall have all her rights, liberties and immunities, safe, whole and inviolable in all things.” The foregoing clause or first section of this *act* seems, therefore, evidently to have been intended only as an abridgment or rather an enactment of the *bill*. They were both, most probably, intended also as copies of the first clause in the statute of *magna charta*, to wit,—“That the *Church of England* shall be free, and enjoy her whole rights and liberties inviolable.”‡ Indeed, the whole of this act of assembly, (1638–9, ch. 2,) as to its form, bears considerable resemblance to *magna charta*, the former consisting of distinct sections or paragraphs, as the latter of distinct chapters, relative to distinct and unconnected subjects. *Magna charta* has been denominated a “collection of statutes;”§ in like manner this act of assembly may be said to be a collection of most of the bills before mentioned.|| It has been supposed, that

* See the record book in the present court of appeals’ office.—“Lib. C&WH.” p. 63.

† The sections of this act are not numbered in the record, but are so in *Bacon’s* Collection of the Laws, whose method, for the sake of perspicuity, is here followed.

‡ See king John’s charter in Rapin’s Hist. of Eng. (Tindal’s edit.) vol. 2, p. 505, and that of Henry the third, in the statutes at large.—It scarcely needs observation that the “Church of England” was, at the times both of making and confirming *magna charta*, the same as the *church of Rome*, to which the appellation of “Holy Church,” was then commonly applied.

§ *Barrington’s* Observations on the ancient statutes, p. 3.

|| The oldest laws now to be found on record in Virginia are drawn up in distinct *articles*, (on distinct subjects,) in the manner of this act of Maryland, of 1638, ch. 2. See Burk’s Hist. of Virg. vol. 1, p. 279, 280.

CHAP. II. the "liberties of the *English* church," insisted upon in *magna charta*, "were chiefly its immunities from the *papal* jurisdiction,"* which, in the reign of king John, about the time of the first making of *magna charta*, had been carried to an unbounded extent, and in the reign of Henry the third, when the *confirmation* of it took place at Runymede, still existed in great force. It is some proof of the truth of this supposition, that immediately following this clause in *magna charta*, as it was granted by king John, an explanatory clause is added, relative "to the *freedom of elections*, which is reckoned most necessary for the church of England;" which clause is omitted in that of Henry the third.† But, according to the opinion of Lord Coke,‡ it would appear, that this clause was inserted in the *magna charta* with a view of protecting the church of England, as well from the encroachments of the monarch and the power of the barons, as from that of the pope. "That the church of England should be free," he explains to mean, "that all ecclesiastical persons within the realm, their possessions, and goods, shall be freed from all unjust exactions and oppressions, but notwithstanding should yield all lawful duties either to the king or to any of his subjects;" and in further explanation of this clause, as to the "rights and liberties" of the church, he pursues the same idea.

But it is observed on this clause in our act of assembly, by a learned annalist of our country;§—"What the franchises of the church of Maryland were, do not appear; and probably the wisest of her doctors would have been puzzled to tell."—The contemptuous sneer of this remark is, however, not altogether correct. It is certain, that a majority of the colonists of Maryland were, at the time of this session of assembly, English Roman Catholics. They professed themselves to be of the same church as that alluded to in *magna charta*, to wit, the Roman Catholic Church, which was, at the time of making *magna charta*, the church of England, as therein expressed. The expression,—"*holy church*," used in the act of assembly, occurs

* Barrington's Observations on the ancient statutes, p. 6.

† The "freedom of elections" here relates to the election of the dignitaries of the church, as archbishops, bishops, &c.; and the insertion of it was most probably occasioned by the then recent dispute with pope Innocent the third on his arbitrary appointment of cardinal Langton as archbishop of Canterbury.—See king John's charter as it is in Tindal's edition of Rapin's Hist. at the end of vol. 2; also 1 *Bl. Com.* 379.

‡ 2 *Inst.* 2.

§ Chalmers's Annals, p. 213.

not only in magna charta, but in most of the other charters prior to it, and indeed is a well known expression commonly applied to the Church of Rome.* Although the provincial government of Maryland did, as we have before seen, permit Protestants to reside within the province, yet it does not appear, that they had no intention of making the Roman Catholic Church the *established church* of the province. When we reflect on the original causes of their emigration, on this legislative provision for the benefit of their church, and on a similar one passed in the succeeding year, 1640, we cannot but suppose, that it was the intention of those, in whose hands the government of the province was, (a majority of whom were, without doubt, Catholics, as well as much the greater number of the colonists,) to erect a hierarchy, with an ecclesiastical jurisdiction, similar to the ancient Church of England before the reformation, and to invest it with "all its rights, liberties, and immunities." It is probable, however, that they felt themselves checked in carrying these intentions into execution by the reflection of their being still under the superintending dominion of the Protestant hierarchy of the mother country, and therefore they permitted *heretics* to become colonists among them; though it does not appear that these heretics or Protestants enjoyed any other *immunity* than a mere toleration of residence and a security in the protection of their persons and property.† If then, as we may fairly presume, it was the intention of the lord proprietary, as well as the ruling persons of his colony, to engraft the Roman Catholic Church into the constitution of the provincial government, as the *established hierarchy* of the state, "the rights, liberties, and immunities of *holy church* would have immediately sprung up in luxuriant abundance; nay, indeed, those of the present reformed church of England, though far short of what they were prior to the reformation, are not of an inconsiderable number. Lord Coke, in his comments on this clause of magna charta, after the following observation, mentions some of them;—"And true it is, that ecclesiastical persons have more and greater liberties than other of the king's subjects, wherein to set down all

CHAP. II.
1639.

* The words—*Sancta Ecclesia*, or "holy church," occur in the charters of Henry the first, king Stephen, Henry the second, king John, and Henry the third. See these charters at the end of the second volume of Tindal's edition of Rapin's Hist. of England.

† The proclamation before alluded to, to prevent disputes between Protestants and Papists, most probably went no further than *protection*.

CHAP. II. would take up a whole volume of itself, and to set down no example agreeeth not with the office of an expositor." He then mentions the privileges of clergymen in being exempted from serving in any temporal office,—from serving in militia,—from paying tolls and customs, average, pontage, paviage, and the like, and their goods were privileged from the king's distresses, or from purveyance—at that time a grievous burthen. It cannot be denied, that, if this religious establishment had taken place, most, if not all, of these "liberties and immunities" would have appertained to the Maryland church. It would probably also have been endowed with large portions of real property, when an observation of lord Coke on this subject would again occur;—"great were sometimes their *rights*, for they had the third part of the possessions of the realm.*

An oath of
allegiance
to his ma-
jesty pre-
scribed.

Sect. "(2.) All inhabitants shall take an oath of allegiance to his majesty."

This act, however, did not prescribe the form or terms of the oath so directed to be taken; as may, indeed, be inferred from the expression—"an oath of allegiance,"—leaving the form of such oath to be prescribed by some other act of the legislature. This omission can be accounted for only upon the supposition, that the *bills* before mentioned, "twice read, and engrossed, but not passed," were nevertheless considered as *directory* to, if not *obligatory* upon, the inhabitants of the province; and, therefore, that the bill, entitled "an act for swearing allegiance,"† which prescribed the form and terms of an oath of allegiance, should be the oath to be taken under this clause of the act of assembly. It will be recollected, that the oath of allegiance prescribed by the statute of 3 *Jac.* 1, ch. 4, was the English oath of allegiance in force at the time of lord Baltimore's visit to Virginia, when it was there tendered to him, and which he refused agreeably to the general resolution entered into by all the English Roman Catholics, under the positive commands of the pope. As our colonists of Maryland professed to be subjects of the king of Great Britain, it was necessary, that some oath of allegiance should be adjusted, so as that conscientious Roman Catholics might take it without hesitation. We find, accordingly, a bill among those passed at the preceding session of assembly, the second held in the province, as before men-

* 2 *Inst.* 3.

† See the *title* of this bill, inserted as No. 2, among the thirty-six bills of this session, enumerated in Bacon's Collection of the Laws.

tioned, in the year 1637, (1638, N. S.) entitled, "a bill for CHAP. II.
swearing allegiance to our sovereign, &c."* But as no records 1639.
of these bills are now to be found, we are unable to ascertain its contents. The bill first above mentioned, however, of the next and present session, of which we are now treating, is still upon record, and, as it appears to have been acted under, in virtue of the reference to some oath unascertained by this act of 1638, ch. 2, but ascertained by the bill, and as it exhibits the *political* state of the colony, in relation to the English crown, it may with propriety be here inserted.†

Many parts of this bill, and much of the form of the oath prescribed by it, seem to have been copied from the statute of 3 Jac. They both prescribe the oath to "any person of the age of eighteen years or above," and the oaths are verbally the same as far as the words—"dominions and countries." The form prescribed by the statute then requires a negation of the power of the pope to depose the king, or to intermeddle in the affairs of the kingdom, which that of the bill omits. A most important variance; and which seems to have constituted the great stumbling block of the English Roman Catholics of those times. Also, the expression in the bill,—"*lawful* successors," which is not in the clause analogous to it in the statute, wears the appearance, as if our provincial legislature meant here to leave room for future equivocation on the *lawful* succession to the crown. Possibly they thought, that, if the pope should object to the descent of the crown in any future case, as he did to that of Elizabeth, it would not have been considered by the papists as a *lawful* succession.—Another material variance appears between the two oaths;—in the statute, it is expressed,—"*against his or their persons, their crown and dignity*;" in the bill, the word "*persons*"—is omitted. So that if the dictates of their religion prescribed an assassination of the king, the *person* of the king was not secured by the oath prescribed by our legislature.

To corroborate the suggestion we have made, that this bill, entitled, "an act for swearing allegiance," as well as the rest of the bills of this session, mentioned to have been read twice and engrossed, but never read a third time, were nevertheless considered as *laws of the province*, and acted under as such, it may be proper to mention, that at a court holden at St. Mary's on

* See the title of this bill among those of that session, enumerated in Bacon's Laws, as No. 21.

† See note (XXII.) at the end of this volume.

CHAP. II. the 20th of March, 1638-9, which was the next day after this
 1639. present assembly rose, the oath of allegiance, as prescribed in the foregoing bill, was taken by the governor and council, and so expressly referred to in the record.*

Sec. "(3.) The lord proprietary shall have all his rights and prerogatives."

The rights and prerogatives of the lord proprietary secured. Among the bills before mentioned, "engrossed but not passed," is one, entitled, "an act for maintaining the lord proprietary's title to the lands of this province."—We may suppose, that his "title to these lands" would naturally be included under the denomination of "his rights," secured to him by this act. It will be recollected, that both the right and title of the lord Baltimore to the lands of this province, or to a considerable portion of them, had been disputed by William Clayborne and those who claimed under him; which claim of his was founded, not only on his royal license to trade with the Indians, but also, as he alleged in his petition, before stated, on his purchase of these lands, at least of the isle of Kent, from the Indian kings. It is possible, that others also were now imitating Clayborne's conduct, and pretended by such purchases to acquire titles to lands within the limits of the province independent of the lord Baltimore. It would appear also, from the tenor of this *bill*, just above mentioned, that the Maryland government were apprehensive or had received information, that purchases of lands, within the limits of the province, had been lately made of the subjects of a "foreign prince or state," most probably either the Swedes or Dutch, whose subjects were now busy in forming settlements on the west side of the Delaware river. As lord Baltimore's grant included, as he contended, (and perhaps justly,) the whole of the peninsula between the Delaware and the Chesapeake, from the capes of the former to the mouth of the Schuylkill, it was natural for his agents in Maryland to be jealous of these encroachments by the Swedes and Dutch on the lands of his province.

It was, therefore, enacted by this bill, "for maintaining the the lord proprietary's title," &c., that—"No subject of his majesty's the king of England, or of any other foreign prince or

* The following entry is in the book, entitled,—“Council Proceedings from 1636 to 1657,” p. 40—“Then the governor authorized the secretary to administer to him the *oath of allegiance* as it is recorded in the bill of the last assembly, entitled, “an act for swearing allegiance;” Then the governor administered the same oath to all the council.”

state shall obtain, procure, or accept of any land within this province from any foreign prince or state, or from any person whatsoever, (the natives owners of the land excepted,) other than from the lord proprietary or his heirs or some person claiming under him or them.—Neither shall he obtain, procure, or accept of any land within this province from any Indian to his own or the use of any other than of “the lord proprietary or his heirs, nor shall hold or possess any land within this province by virtue of such grant, upon pain that every person offending to the contrary hereof shall forfeit and lose to the lord proprietary and his heirs all such lands so accepted or held without grant of the lord proprietary or under him.”*

Under this branch of this act of 1638–9, also may be noticed another of the bills of this session, entitled, “an act for trade with the Indians;” inasmuch as it seems to have particular relation to the “rights and prerogatives” of the lord proprietary. It would seem, that those who claimed under Clayborne, perhaps Virginians as well as some of the inhabitants of the isle of Kent, had never relinquished the practice of carrying on an illicit trade with the Indians resident within the limits of the province of Maryland. The waters of the Chesapeake, navigable in so many branches of rivers and creeks intersecting the province in every direction, formed, without doubt, from its great convenience for the purpose, a considerable temptation to this illegal traffic with the natives. It appears to have been a source of uneasiness to lord Baltimore’s government from the first settlement of the province to the period of time of which we are now treating. The governor and council had accordingly at various times endeavoured to check this illicit trade by ordinances and proclamations for the purpose. But it was, probably, now thought, that it would be more consonant to the liberties of the freemen of the province, to interpose the less exceptionable power of the legislature in prescribing some check to the proceedings. A bill was, therefore, introduced into the house of assembly on the third day of its session, (March 1st,) “for trade with the Indians;” but, according to the journal, it was “rejected upon reading the first clause, by all except the captain, the president, and the secretary.”† For what reason this

* Lib. C. and WH. p. 3.

† It has been before observed, that whenever the words,—“the captain” occur on our first records, they were meant to designate captain *Cornwaleys*.

CHAP. II. bill was now rejected, it does not appear. However, notwithstanding the rejection of the bill, the governor, probably incensed at some present existing abuses and insolencies to the government of that nature, thought it proper to exert his prerogative, without the aid of the assembly, in suppressing this illegal traffic, and accordingly in a few days after the rejection of the bill, during the session, issued his warrant or commission for arresting all persons with their vessels and goods, trading without license with any Indians within the province.* Also, on the next day after issuing this warrant, to wit, on the seventh of March, another bill with the same title was introduced in the house; but as the bill was about to be read, a member objected against it, as being a bill before rejected.—“The secretary replied, that it was a new bill, though with the former title, and that the house could not judge, whether it were to be read again, or no, before they heard it read. The gentleman objected, that it was against form and order. The secretary replied, that the order spoke of “utterly rejecting a bill,”† but this was not “utterly rejected” by the house, in regard divers assented to it, and therefore it could not be put to the house to vote the passing of it till the third reading; and accordingly, with the consent of the house, the secretary proceeded to read it as the first time of reading. The gentleman interrupted, and desired first to read some propositions to the house touching the bill; but it was adjudged, that the bill should first be read, and then he might object what he pleased. So the bill was read.”‡

It must be confessed, that the secretary’s reasoning here does not appear quite satisfactory. It can hardly be supposed, that the words—“utterly rejected,”—were meant as being synonymous to “unanimously rejected;” for, according to parliamentary usage, then as well as at this day, a majority of voices always decided at any reading of a bill; and, as it seems, if the opposition succeeds at either of the readings, the bill must be dropped for that session.§ The first reason assigned by the secretary seems, however, to have more weight in it than his construc-

“The president” was governor Leonard Calvert, and “the secretary” Mr. John Lewger.

* See this warrant or commission in note (XXIII.) at the end of this volume.

† See this rule of the house stated before, p. 104.

‡ See the journal of this session in the record book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” from p. 35 to p. 53.

§ See 1 *Bl. Com.* 182.

tion of the rule. If the second proposed bill differed in substance from the former rejected bill, though having the same title, it could not be the same bill as the one before rejected, and therefore not within the rule of rejection. This seems to be implied from a parliamentary rule in England, which has been adopted in America.—“A bill once rejected, another of the same substance cannot be brought in again the same session.”* But if the second bill is not of the same substance, the inference is, that it may be brought in again the same session, although it have the same title. Also, if the law be, that the title of a statute is no part of the statute,† it would be immaterial, whether the title of the second bill was the same as that of the former, or not, provided the body of the bill differed in substance from that of the former.

The secretary, however, succeeded; for, on the next day, the eighth of March, the same bill was read a second time and engrossed for a third reading. As this bill throws considerable light on the contested title of the lord proprietary to his province, and moreover is illustrative of some historical facts of this period of time, the reader will find it among the documents at the end of this volume.‡

It was probably in furtherance of this bill, that a new commission, nearly similar to the preceding one to John Harrington, was made out on the eleventh of March, (two days after this bill was ordered to be engrossed,) to two persons, (to wit, “Cuthbert Fenwick, gent. and John Hollis, mariner,”) authorising them to search and seize all vessels, &c., so illicitly trading with the Indians of the province.§

Sect. “(4.) The inhabitants shall have all their rights and liberties according to the great charter of England.”

Among the bills agreed to at the former session of 1637, (O. S.) was one entitled, “A bill for the liberties of the people.” It is probable that the bill at this present session, among the thirty-six bills before mentioned,) entitled, “An act for the liberties of the people,” was a copy of that bill introduced at the preceding session. As the latter bill is still extant upon record, the substance of it may be here stated as explanatory of the fourth section of the act just above recited.

* Jefferson's Manual, sect. 43; who cites Hakeor, 153. 6 Grey, 392.

† 2 Bac. Abr. tit. Statute, (I.) pl. 10.

‡ See note (XXIV.) at the end of this volume.

§ “Council Proceedings from 1636 to 1657,” p. 38.

The rights and liberties of the people secured.

CHAP. II. "Be it enacted by the lord proprietarie of this province, of
 1639. and with the advice and approbation of the freemen of the same, that all the inhabitants of this province being christians, (slaves excepted,)* shall have and enjoy all such rights, liberties, immunities, privileges and free customs, within this province, as any natural born subject of *England* hath, or ought to have or enjoy in the realm of England, by force or virtue of the common law or statute law of England, saving in such cases as the same are or may be altered or changed by the laws and ordinances of this province; and shall not be imprisoned or disseized or dispossessed of their freehold, goods or chattels, or be outlawed, exiled, or otherwise destroyed, forejudged, or punished, than according to the laws of this province: saving to the lord proprietary and his heirs all his rights and prerogatives by reason of his domination and seigniorie over this province, and the people of the same."†

This *bill* appears to have been intended, not only as a recognition of the extent of the common and statute law of England to this province, but also as a *specification* of those particular clauses of magna charta by which the "rights and liberties" of the inhabitants were to be secured to them. But the *act*, more properly perhaps, by a *general* clause, recognizes the whole of such parts of magna charta as relate to the "rights and liberties" of the people.

It must be observed, that these legislative proceedings throw great light on the political relations, which, in the estimation of our earliest colonists, subsisted between the province and the mother country. We may here trace the sources of that enthu-

* *Chalmers*, in his annals, (p. 214,) thus remarks on this bill.—"Slavery seems to have rooted in Maryland with the original emigration: because an act of this assembly describes "the people," to consist of all christian inhabitants, "slaves only excepted." A probable reason for this may be added; that, as Maryland borrowed most of its provincial institutions from Virginia, slavery was amongst the first of those introduced from thence, where it had without doubt existed from the time of the first importation of negroes into that colony in the year 1620, or 1619, as we have before stated. If the slaves, alluded to in the above bill, were negroes, as they most probably were, the above exception seems to countenance the idea, subsequently taken up, that making a negro a christian, by baptizing him, was emancipating him; against which idea an act of assembly, (1715, ch. 44) in force at this day, very gravely provides. The illiberality also of this bill, in confining the enjoyment of "English rights and liberties" to *christians* only, ought not to pass unnoticed. Neither a Jew nor an infidel of any kind were considered as being entitled to any "rights or liberties." But, strange to tell! this narrow-minded policy subsists in the *free* State of Maryland to this day.

† "Lib. C and W H," p. 2.

siasm, which so strongly manifested itself in succeeding times, whenever the American colonists apprehended only, that these "rights and liberties," which they claimed as secured to them "by the great charter of England," were in any manner endangered. It might justly, therefore, excite surprise that so learned a lawyer as Sir Thomas Trevor, the attorney-general in the reign of William the third, should express doubts, "whether the great charter had ever been extended to *Maryland*, or whether it was proper to allow the people there the various privileges contained in it."* If it be true, as alleged by lord Coke, that "magna charta was, for the most part, declaratory of the principal grounds of the fundamental laws of England;"† and if the position be correct, that "our colonists brought with them so much of the English law as was applicable to their situation and condition;"‡ it must necessarily follow, that such parts of magna charta as were applicable to the situation and condition of the colonists of Maryland extended to that province; but, could a doubt possibly arise as to its actual extent, revolutionary events must have long since convinced every thinking Englishman, that "it was always proper to allow the people there the various privileges contained in it."

Sect. (5 and 6.) The two next clauses of this act of 1638-9, CHAP. II. 1639. The administration of justice regulated. ch. 2, seem to have been intended to make further regulation of the *judiciary* department of the government and of the administration of justice. They will, therefore, be considered here in conjoint view.

"(5.) The lieutenant general (within the province) and the commander of the isle of Kent, (within that island,) except appeal be made from him, and the council of the province in causes wherein the lieutenant general is plaintiff, shall cause right and justice to be done in all causes *civil* according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like cases, as near as he or they shall be able to judge. And shall try all such causes, and use, command, &c., all power and means necessary and conducing thereunto. And the said lieutenant-general and commander shall take an oath to administer equal justice to all persons, without favour or malice of any one.

"(6.) The lieutenant general, or any one of the council (with-

* Chalmers's Annals, p. 214.

† 2 *Inst. proem.*—1 Bl. Com. 127.

‡ 1 Bl. Com. 107.

CHAP. II. in the province,) and commander of Kent (within that island,) shall use, &c., all power and means necessary to the apprehending of felons, or keeping of the peace. And the lieutenant-general and council shall and may try and censure all offenders with any punishments as they shall think the offence to deserve; except that in crimes extending to life or member, the offender shall be first indicted, and afterwards tried by twelve free-men at the least. And the commander of Kent (within that island,) shall and may try and censure all offenders within that island, with such corporal shame or correction (not extending to life or member,) as he shall think the offence to deserve. And every councillor shall take oath to defend and maintain the rights and prerogatives of the lord proprietary in all things, and to assist the execution of justice without favour or malice of any one, and to do all other things as becomes a councillor to do."

It does not appear, that any material alterations in the mode of distributing justice, were made by these clauses of this act from what had been before adopted under the *executive* authority of the government through the means of the commissions before stated; but they seem to have been rather intended as a *legislative* confirmation of those previous arrangements. The question which occurred at the last session of the legislature, relative to the extent of the laws of England within the province, seems to have been here ascertained and settled. In *civil* cases, "right and justice was to be done according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like cases." The laws or laudable usages of this province must have meant the *acts of assembly and the practice* of the courts of the province; in default of these the *common law* of England; which was nothing more, indeed, than confirming by act of assembly the directions in the commissions before stated. The exception in the fifth section, in cases of *appeal* from the commander of Kent, presupposes an *appellate* jurisdiction in the provincial court at St. Mary's held before the lieutenant general, as we have before mentioned.

A variance appears in the powers of the lieutenant general in *civil* and *criminal* cases. In the former, he seems to be constituted sole judge of the supreme provincial court. But, as by his last commission from the lord proprietary, of the 15th of April, 1637, before mentioned, he was directed "to advise from

time to time" with his council, "as he shall see cause upon all occasions," some of the members of the council seem generally to have sat as associates with him, constituting, as we have before mentioned, what subsequently obtained the name of the "provincial court." In *criminal* cases, however, it seems to have been very properly considered, that, to vest in the hands of any one man a power and jurisdiction over the *persons* of the inhabitants of the province, would be too dangerous for the peace and happiness of the community. It was, therefore, specially and expressly provided by this act of assembly, that "the lieutenant general and council were to have jurisdiction over "all offenders;" in which respect, there seems to be some variance between the commission of the 15th of April, 1637, and this act; for, the commission seemed to authorize the lieutenant general *solely* to take cognizance, of all *criminal* cases, except where the life or member of a person was involved in the punishment; but this act seems to be express in requiring *the council* to be a part of the court in every criminal case, whether it extend to life or member, or not. It is true, that the commission authorized the governor to call in the assistance of his council "upon *all occasions*, as he should see cause," and it is probable, he so did, even in minor criminal cases, where he was not expressly so directed by his commission. It was more proper, however, that an express legislative provision should be made for the purpose. But it is observable, that the commander of the isle of Kent, having no council, was invested with a *sole* jurisdiction over all offences, short of a punishment affecting life or member.

It may be remarked, that the expressions,—“with any punishments as they shall think the offence to deserve,”—gave, perhaps, too great a latitude to be vested in any tribunal. But this, we may suppose to mean that *legal* discretion spoken of by lawyers, under the maxim,—*discernere per legem quod sit justum*; and would then amount only to that discretion, which the common law reposes in the judges of all its criminal courts, in respect to fines and corporal punishments. A stronger objection seems to arise to that part of the act, where it appears to authorize a *summary* mode of trial in inferior cases of criminal jurisdiction, without the intervention of either a grand or petit jury, by providing specially, by way of *exception*, that such proceedings shall be had "in crimes extending to life or member."

CHAP II. On the principle, that *exceptio probat regulam*, we are to infer
 1639. that the trial by jury was not deemed a matter of right in minor criminal cases.

Another defect appears in this act of legislature, with regard to the subject matter upon which this criminal jurisdiction thus erected was to act. In crimes not extending to life or member, the common law was without doubt to be their guide; but by the commission of the 15th of April, 1637, where the life or member of any person came in question, they were to determine "according to the laws of the province," which expression, as before observed, meant—acts of assembly. But the legislature had provided no acts of assembly in cases of crimes punishable with the loss of life or member, and, if such crimes should be committed, recourse could not be had to the common law of England, for such, it seems, had been their construction of his lordship's commission, that it prohibited them from the punishment of crimes affecting life or member without the authority of "laws of the province." From this a strong inference arises that the number of *bills* brought forward at this session, for the punishment of capital as well as other offences, were supposed and intended as the "laws ordained" by force of the general act, to supply the silence of that act relative to crimes generally, and particularly as to those affecting life or member. We shall, therefore, proceed to a consideration of some of the most prominent and important of these *bills*.

Some particular laws for the punishment of crimes.—
 First, for that of treason.

According to the gradation in the scale of crimes, the first that attracts our notice is the bill, entitled, "an act for treasons;" by which the following offences were to be adjudged treasons within this province. "To compass or conspire the death of his majestie the king of England, or the queen his wife, or of his son and heir; or to levy war against his majesty, or to counterfeite the king's great or privy seal, or his coin; or to join or adhere to any foreign prince or state, being a professed enemy of his majesty, in any practice or attempt against his said majesty: or, to compass, conspire, or cause the death of the lord proprietary within this province, or of his lieutenant general for the time being, (in absence of his lordship,) or to join, adhere, or confederate with any Indians, or any foreign prince or governor to the invading of this province, or disheriting the lord proprietary of his seigniory and dominion therein. All offences of treason to be punished by drawing, hanging, and quartering of a

man, and burning of a woman; the offender's blood to be corrupted, and to forfeit all his lands, tenements, goods, &c., to his lordship. But punishment of death to be inflicted on a lord of a manor by beheading."* CHAP. II.
1639.

The only new treasons, different from the statute of 25 *Edw.* 3, introduced by this bill were, that which consisted in compassing the death of the lord proprietary during his residence within the province, and those enumerated in the subsequent part of the bill. It must be acknowledged, that to confederate with or adhere to Indians or any foreign prince or governor for the purpose of invading the province, as well merited the punishment of treason, as an invasion of the mother country. The punishment of death by *beheading*, prescribed by this bill also, in favour of lords of manors, seems to be some proof among several other circumstances, which appear on the records, that the institution of an order of nobility was contemplated by the lord proprietary for many years after the first emigration of the colony; to the creation of which he was authorised by the fourteenth section of his charter.

Another bill also, entitled, "an act for felonies," was proposed at this session; by which the following offences were to be adjudged *felonies*, punishable with death.† For felonies. "Homicide;—bloodshed, committed by assault upon the person of the lieutenant general;—to shed the blood of any judge sitting in court;—burglary, robbery, polygamy,‡ sacrilege, sorcery, petit treason, sodomy, and rape."—It was also made "felony within this province to commit *idolatry*, which is" (as defined by the bill,) "the worshipping of a false God;"—or to commit "blasphemy, which is a cursed or wicked speaking of God;"—or to commit "perjury, which is false witness against another's life;—or "to sell, give, or deliver to any Indian, or to any other declared or professed enemy of the province, any gun, pistol, powder, or shot without the knowledge or license of the lieutenant general, or to

* Lib. C. and WH. p. 45.

† As the next bill, immediately following this, entitled, "an act allowing book to certain felonies," was evidently framed for the purpose of ascertaining what felonies or crimes should be entitled to the *benefit of clergy*, and therefore not capital or punishable with death, it is clear, that this first mentioned bill, entitled, "an act for felonies," was made to take away clergy from the crimes therein specified, and make them capital, that is punishable with death *without the benefit of clergy*, or "allowing book" to them.

‡ See note (XXV.) at the end of this volume.

CHAP. II. teach any Indian or other declared enemy of the province the
 1639. use of the said arms or the making thereof.

“The offender in any of these felonies to suffer pains of death by hanging, forfeit to the lord proprietary all the land in the province whereof he was seized at the time of the offence committed, (saving to the widow her dower, and to the heir his or her inheritance, if claims be made thereof within three years after judgment given,) and all his goods and chattels whereof he was possessed at the time of his conviction.

“Provided, that in petit treason the punishment of death shall be inflicted by drawing and hanging of a man, and by burning of a woman ;—and in sorcery, blasphemy, and idolatry by burning.”

“Accessaries before the fact to be punished as the principals.”*

It must be acknowledged, that this part of the penal code here prepared for our infant colony was a bloody and severe one indeed. The punishments annexed to some of the offences therein described seem to have been exaggerated beyond what they even then were in England. Sorcery or witchcraft was then punishable in England under the statute of 1 *Jac.* 1, ch. 12, by which the offender was “to suffer the pains of death as a felon without benefit of clergy,” that is, *by hanging*. It is to be observed, that prior to the reformation in England, sorcery was considered as synonymous to a species of *heresy* ; and therefore came under the conusance of ecclesiastical judges, upon whose sentence the writ *de heretico comburendo* issued ;† so that the punishment of this offence under the catholic government, prior to the reformation, was *burning*. But, at the commencement of the reformation, in the reign of Henry the eighth, when it was in many instances thought proper to transfer judicial power from the ecclesiastical to the lay judges, this offence was (by the statute of 33 *Hen.* 8, ch. 8,) made felony without benefit of clergy, and consequently cognizable in the temporal courts, and punishable *by hanging*. The fluctuating state of the reformed religion, at its first commencement in England, caused this statute, together with others relative to new made felonies and treasons to be repealed by several successive statutes in the subsequent reigns ; and the subject thus rested, until that propensity to metaphysical disquisitions, blended with religious weakness, so cha-

* Lib. C. and WH. p. 46.

† 3 *Inst.* 44.

racteristic of the mind of king James, as also perhaps of the age in which he reigned, permitted the imaginary offence of witchcraft to be again cognizable by the temporal tribunals, and made felony without benefit of clergy by the statute of 1 Jac. before mentioned. It might have been supposed, that the colonists of Maryland would have considered this statute as extending to them, it being certainly as applicable to their local situation on this side of the Atlantic as on the other, as the bloody records of the Massachusetts colony too horribly attest. We are to infer therefore, that the colonists of Maryland, in thus changing the punishment of the offence of sorcery from *hanging* to *burning*, meant to preserve the ancient mode of punishing this offence heretofore pursued by "holy church." Filled with this sentiment the minds of our first catholic colonial legislators would naturally be induced to consider *blasphemy* and *idolatry* also in a similar point of view. The "worshiping of a false God," or "a cursed or wicked speaking of him," would in their understanding of those offences merit the same fate. It is somewhat singular, however, that the accusations of their reformed fellow-subjects in England did not make our catholic colonists more delicate on the subject of idolatry. The protestant iconoclasts had long been in the habit of considering even the genuflexions of the catholics before the images and pictures of the son and the virgin, as gross idolatry.—The definition of *blasphemy* also left too much latitude to the malicious or prejudiced minds of the judge or the jury. The *protestants* of Maryland, however, when they subsequently came to legislate upon this last mentioned offence do not appear to have been much improved in their ideas of humanity. The boring of the tongue and the branding of the forehead is a punishment but a little less horrible to a mind of sensibility than the terrors of death.*

The next *bill*, entitled, "an act allowing book to certain felonies," seems to have been intended as a third chapter of their penal code. By this bill the following offences were to be adjudged felonies, but within the benefit of clergy.

* See the act of 1723, ch. 16; which never was *expressly* repealed. The 33d section of the declaration of rights, prefixed to the constitution of Maryland is supposed to have repealed it. But if it has, it is by a very obscure and remote implication, and to aid such a construction it requires, that the judge be a man of liberal ideas on religious subjects. There are abundant grounds in it for a bigot or a fanatic to hesitate in such a construction.

CHAP. II. “Manslaughter ;*—malicious trespasses, as to burn or destroy
1639.

wilfully a house, or stack of corn, or tobacco,—or to cut out another’s tongue, and the like mischief done to another out of pure malice ;—forgery, which is the wilful embezzling or corrupting of a record ;—mere contempts with force, as to assault or beat the lieutenant general of the province, or to assault or beat any judge sitting in court,† or witness or juror in presence of the court ;—accessaries to felony after the felony committed, which is the receiving, hiding, or rescuing of a felon, knowing him to be one, (except it be the felon’s wife ;) or the receiving stolen goods, knowing them to be stolen ;‡ *stealth of one’s self*, which is the unlawful departure of a servant out of service or out of the colony without the privity or consent of the master or mistress.§

“Offender to suffer pains of death by hanging, except the offender can read clerk-like, and then he shall lose his hand, or be burned in the hand or forehead with a hot iron, and forfeit his lands at the time of the offence committed ; (saving to the widow her dower, and to the heirs his or her inheritance, if claims be made thereof within three years after judgment given,) and all his goods and chattles whereof he was possessed at the time of his conviction.”—The second offence made capital.||

The reader will feel considerable indignation in recollecting, that such had been the abominable influence of the Romish clergy over most of the nations of Europe, that they had arrogated and maintained to themselves an exemption from any punishment annexed to the commission of crimes, but such as

* We perceive here considerable inaccuracy in the mode of legislation in these times. *Manslaughter* was undoubtedly included under the offence of *homicide* mentioned in the former bill. It may be supposed, therefore, that by the term *homicide* in the former bill *murder* was meant.

† This seems to explain and limit the description of the offence mentioned in the preceding bill,—“in shedding the blood of the lieutenant general or any judge sitting in court,” so as that the former bill should have relation only to *attempts to murder*.

‡ This did not, at the common law, make a man an accessary after the fact, unless he also received the thief ; nor does it appear clearly from the words of the bill, as above, that it intended to make the receiver of stolen goods an accessary, but liable only to the same punishment subsequently prescribed.

§ It must be acknowledged, that this is a singular description of the offence of a *runaway servant*. A servant here meant must have been those commonly called *indented servants*, imported at the expense of the master by payment of his passage, &c. on condition of serving him so many years. A passage in the *Digest*, of the Roman civil law, relative to fugitive slaves, seems however to warrant this mode of expression.—*Servus fugitivus sui furtum facere intelligitur*.—See Puffendorf Law of Nat. B. vi. ch. 3d, sect. 7.

|| Lib. C. and WH. p. 47,

their own ecclesiastical tribunals thought fit to impose. This CHAP. II.
1639. privilege, originally annexed to their order by the ancient church, was not abrogated in England by the reformation. It had so interwoven itself with the common law of the realm, that a total abolition of even so odious an exemption became almost impossible. Hence, therefore, the extraordinary test, of a title of such privilege,—*legit aut non legit?* Can he read or not?—which illiterate christians, in the middle ages of their era, had deemed a sure criterion of such title,—was still used and practised at the time of the first settlement of Maryland, and, strange indeed to tell, continued to the commencement of the eighteenth century. It was no slight slur upon the aristocracy of the English realm, at the commencement of the reformation, that they, however, had sufficient influence to procure to *themselves* an exemption from this absurd test, by causing it to be inserted in the statute of 1 *Edw.* 6, ch. 12, that any peer of the realm should be entitled to the benefit of the clergy, “without any burning in the hand, *though he cannot read;*” thus confessing a shameful destitution of literary qualifications and at the same time evading the punishment of *burning in the hand*, which the temporal courts had contrived to exact from *laymen*, in order to designate such as should be guilty a second time of the same offence, to which a higher punishment was sometimes annexed. It was not till about the year 1707, that the statute of 5 *Ann.* ch. 6, was enacted, which finally abolished altogether this ridiculous test of a right to claim what was called, the benefit of clergy.

It may be further observable on the penal clause of this bill, that the alternative punishment on granting the benefit of clergy, in causing the offender, either “to lose his hand *or* be burned in the hand or forehead with a hot iron,” was intended to be so construed, as that “the loss of the hand” shall be annexed to those offences before enumerated in the body of the bill, to which by the common law or former English statutes such punishment was before annexed, as for instance, in the case of “assaulting or beating any judge, sitting in court;”^{*} and the “burning in the hand or forehead,” to be applied to such other offences therein enumerated, to which such punishment had been

^{*} By the common law at this day the assaulting a judge sitting in one of the courts of Westminster Hall, even by drawing a weapon, without any blow struck, is punishable with *the loss of the right hand.* 3 *Inst.* 140.—4 *Bl. Com.* 125.—It is questionable, however, whether the humanity of the age would not now require a royal pardon of this part of the punishment.

CHAP. II. usually applied in England.—The rule of construction,—*reddendo singula singulis*, a rule of grammar as well as law, seems to authorise it in this case.

1639.

The next bill, entitled, “an act determining enormous* offences,” seems to have been intended as a completion of their criminal code, cognizable in their *courts* of justice, by an enumeration of such offences, as those which either the common law did not provide against, or which the legislature desired more particularly to designate as objects of the common law jurisdiction, under the rank of offences denominated—*misdemeanors*. It is remarkable, however, that no punishment whatever is specified in the bill to any offence therein described. It was, most probably, intended by such omission to leave the punishment of the offences therein enumerated, to the legal discretion of the court, as misdemeanors commonly are in England. A peculiarity, which pervades the criminal code of our provincial legislature at this session, will have occurred, without doubt, to the reader, in observing a short definition annexed to every offence after its specific denomination. Such definitions in some instances, however, appear to have been intended rather as a limitation to the extent of the offence denominated, than as a general definition of it, as in the crimes of perjury and forgery mentioned in the two preceding bills, as well as in this against “enormous offences.”†—It will be observed also, that considerable anxiety is manifested in this bill, to bolster up the lord proprietary’s authority against any usurpation or assumption of power not derived from him, within his province; and the making the disobedience of his *ordinances* and *proclamations* punishable in his courts of justice, as a misdemeanor, would go far to establish them as of equal validity and obligation to legislative acts.—The interposition of the legislature, in holding out protection to the *Indians* from injuries to their persons or goods, deserves approbation.

A supplement to this early provincial code of criminal jurisprudence might here in regular order be noticed; but as it consists of those offences, which were vested in the cognizance of justices of the peace, whose authority and jurisdiction were specially provided for by another distinct bill, which seems more properly to fall under the arrangement of those provided for the

* Lord Colce explains the word—“enormous”—to mean—“horrible, exorbitant, *et extra omnem normam*.”—See 4 *Inst.* 331.

† See this bill at large in note (XXVI.) at the end of this volume.

erection of courts of justice, the consideration of it here, is, for CHAP. II.
the present, postponed to its proper place.

Although, as before observed, no material alteration was made at this session of 1638-9, in the *judiciary* department of the government from what it was before, yet it may be proper to take some notice of certain *bills*, among those before referred to, whereby a more specific arrangement of the courts of justice within the province appears to have been intended.

1639.
Laws for
erecting
courts of
justice;—
and first, of
a court of
admiralty.

The first of these, entitled, “an act for erecting a court of admiralty,” was in substance, as follows:—“judgment to be given agreeable to the law of this province, or (in default thereof) the judgments, which usually are or ought to be given in the same or the like causes by the custom or law-merchant of England, or in the admiralty court of England, as near as the said admiral, judge or judges, or commissioner or commissioners shall be able to determine.

“Fines and forfeitures of bonds or recognizances to be to the use of the lord proprietary.—Confiscations, derelicts, pirates, or enemy’s goods, goods found in or upon the sea, or within high water mark, (not having any owner challenging the same,) and all other profits and perquisites due or belonging in England to the high admiral of England, shall be to the use and profit of the said admiral, or (in vacancy of an admiral) to the use of the lord proprietary, except when otherwise granted.”*

Although it might at first appear, that a court of admiralty would not be necessary under the government of a colony, having only provincial jurisdiction, and not invested with complete sovereignty, but subordinate as to peace or war to the mother country, yet, situated as the province of Maryland then was, liable to what may be called private wars arising from its own peculiar local situation, such as not only skirmishes with the Indians, but also armed resistance of the laws by Clayborne’s party, and having its territories divided into two parts by a large bay, which might properly be deemed an arm of the sea, and *not within the body of any county*, especially as but one county had been then established, so that offences might frequently be committed on the waters of the province, which would be punishable according to the laws of England, there seems to have been some peculiar necessity at this time for such a tribunal as a court of admiralty. The lord proprietary, by the seventh sec-

* Lib. C. and WH. p. 9.

CHAP. II. tion of his charter, was authorized "to constitute and ordain
 1639. judges, &c., of what kind, for what cause, and with what power soever, within that land" (Maryland,) "and *the sea of those parts*, and in such form as the said now baron of Baltimore, or his heirs, shall seem most fitting."—In pursuance of this clause we find, that the lord proprietary had, in his instructions or commission to his brother Leonard Calvert, of the 15th of April, 1637, before stated, "nominated, constituted, ordained and established the said Leonard Calvert in the absence of us and our heirs, our lieutenant general, *admiral*, chief captain and commander, as well *by sea* as land of our said province of Maryland and the islands to the same belonging, and do by these presents give unto him absolute authority to do all such things as do belong or appertain to the office of a general, *admiral*, &c., to have, hold and enjoy and administer the same with such power and authority as any other lieutenant governor, general, *admiral*, &c. of any other province may, might, or ought by the law of arms to do." As the jurisdiction of the admiralty court in England appertained at this time to the office of lord high admiral, (for, the practice of putting the office in commission as of late years was not then used,) the governor or lieutenant general by the aforesaid commission would have been judge of the court proposed by this bill, and entitled to the perquisites of the office by virtue of the last clause of this bill.

County
courts and
their juris-
diction.

The next of these bills, (as they appear upon the records,) for the erection of courts of justice, is that entitled, "An act for the erecting of a county court."—It will be recollected, as before mentioned, that there was at this time but *one county* in the province, denominated St. Mary's. Although the isle of Kent, (the only part of the province as yet settled, besides that of St. Mary's,) contained at this time several settlements and inhabitants, yet it had not been hitherto erected into a county. But among the bills here referred to, prepared for the regulation of the courts of justice, there was one specially providing on that subject for that island; which bill was entitled, "An act for the government of the isle of Kent," which will be presently noticed in its place. The bill, "for the erecting of a *county court*," was of the following tenor.

"All causes of appeal from inferior courts; and all causes whatsoever *civil*, determinable in any court of common law in England; and all causes for recovery of legacies; and all causes

matrimonial, for as much as concerns the trial of covenants and contracts, and the punishment of faults committed against the same; and all offences of incest; attempting of another's chastity; defamation; temerarious administration; detention of legacies; clandestine marriage without banns thrice published, or bond entered in the court;* and all crimes and offences whatsoever, (not extending to felony or treason by the laws of this province,) for which any certain punishment is appointed by the laws of this province or by the common law of England, shall be heard and determined finally by and before the chief justice of the province for the time being, or by and before such other commissioner or commissioners as the lord proprietary or his lieutenant shall authorise.†

"The said court shall be a court of record, and shall be called a *county court*, and may exercise the same powers, &c., within this province, (in the causes aforesaid,) *as any of the king's courts of common law in England*, except where it is otherwise provided by any law of this province.

"Such forms of process and proceeding upon bill, plaint, information, presentment, or indictment, shall be used in this court as are most agreeable to the laws of this province, or otherwise to the forms used and observed in the courts of common law in England in the same or the like causes, as near as the judge or register may well know them, or otherwise such forms as the said chief justice shall appoint or approve to be used and observed.

"And in all pleas or matters, civil or criminal, (in this or any other court within the province,) the lord proprietary shall be allowed all the same and the like prerogatives and royal rights as are usually belonging to a court-palatine.‡ (Saving always the sovereign dominion due to the king of England.)

"And all issues of fact shall be tried by the said chief justice, commissioner or commissioners, and *the council sitting in court*, or the major part of them, if the defendants shall choose to be

* See note (XXVII.) at the end of this volume.

† This seems to be the first instance of power, expressly vested in the governor, of appointing *by commission* other persons to sit with him as judges, besides those of his council; and it appears to exhibit the first indication of the subsequent arrangement of the *supreme* court of the province under the denomination of the *provincial* court.

‡ It is not easy to determine from the manuscript words in the record, whether the above expression was meant to be, *court-palatine*, or *count-palatine*. In either case the meaning would be nearly the same.

CHAP. II. be tried by the court, or otherwise by a jury of *seven* or more
 1639. *freeholders* of the county to be returned by the sheriff, if the defendant shall choose to be tried by his country. And the register of the said court may at any time take a writ out of the chancery returnable into this court, directed to the sheriff to return any *five* or more *freemen*, (named upon the writ,) for a grand inquest, and after the impaneling the said inquest or any *five* of them, the court shall or may charge them with an oath, truly to inquire of and true presentment to make of all offences and misdemeanors whatsoever committed to their or any of their knowledge, or by vehement suspicion, public fame, or by information of any party upon oath, said or affirmed to be committed against the laws of this province, which presentment delivered into the court by the said inquest shall be an indictment of any party in any crime of felony or treason, (provided that such presentment or indictment be made or formed by a grand inquest of *twelve* jurors at the least,*) upon which such party presented or indicted may be put upon his trial in the *pretorial* court,† and likewise it shall be a conviction of the party presented of any other crime whereof he is presented, (the said crimes of felony or treason excepted,) upon which such party may be *censured*‡ for the said crime unless the party presented purge him or herself thereof by such means as the court shall appoint the party for his or her purgation.”§

“And such judgment shall be given in all causes of this court as is most agreeable to the laws of this province, or (in default of such laws,) to the judgments usually given in the same or the like causes in the civil court or courts of common law in England, as near as the judge shall be able to determine.

“And yearly on the first Monday in October, and afterwards monthly, till March, (inclusively,) shall be held a county court at St. Maries by the chief justice, or (in his absence) by any commissioner by the said chief justice appointed, or in default of a com-

* There seems to be a repugnance here between this and the former part of this clause, where the grand inquest might consist of five freemen. By the common law it is necessary, that *twelve* jurors at least, on the grand inquest, shall agree to a bill before it can be found. A bare majority of those present is not sufficient, unless such majority amount to *twelve*.

† This alludes to a supreme criminal court so denominated, and intended to be erected by another bill, the next but one to this for the county court, and which will be noticed in its place as we proceed.

‡ This, as before observed on another occasion, was a word then used as synonymous to *judgment* in a criminal case.

§ See note (XXVIII.) at the end of this volume.

missioner by the chief chancellor* of state at that time present at St. Maries."†

CHAP. II.

1639.

Although the court here intended to have been created by this last bill, was denominated a *county court*, yet it may be inferred from the circumstance of its having an *appellate* jurisdiction in "all causes of appeal from inferior courts," as also an unlimited jurisdiction over "all causes whatsoever *civil* determinable in any court of common law in England," together with the jurisdiction properly appertaining to the *ecclesiastical courts* in England; that it was intended to have been the *supreme* court of the province, at least in *civil* cases. This is further confirmed by the last clause in the bill, which provides that the court shall be held "by the chief justice;" which office, by the commission of the 15th of April, 1637, as before mentioned, was vested in the lieutenant general or governor of the province.

The next of these bills, that provided for the judiciary department of the government was one entitled, "An act for the erecting of a court of chancery." By this bill it was enacted, "that all matters and causes whatsoever determinable in the high court of chancery in England, and all matters and causes whatsoever *civil*, not provided for by any law of this province, and all causes whatsoever *civil*, (otherwise of right belonging to any other court within the province,) wherein the judge of such other court is a party, (except such other judge be lieutenant general of the province,) shall or may be finally heard and determined within the province by and before the chancellor of this province and council of state for the time being. This court of chancery hereby erected, to have the same form of proceedings as the court of chancery in England."‡

Court of
Chancery.

By the commission of the 15th of April, 1637, the lieutenant general was at this time, (1639,) the chancellor of the province, with authority to call in the assistance of the council for their advice "upon all occasions as he shall see cause." It appears to have been the usage throughout all the English colonies in America, in the West Indies as well as on the continent, that every English governor of every province or island was, by virtue of his commission, *chancellor* of the province of which he was governor, and personally discharged the duties of that office, sometimes solely, and sometimes with the assist-

* This word "Chancellor" is so in the record; but it would rather appear to have been intended as chief *councillor* of state.

† Lib. C & W H. p. 11.

‡ *Ibid.* p. 14.

CHAP. II. 1639. ance and presence of his council, according to the directions of his commission or some special act of the province for that purpose.* In Barbadoes, Antigua, Montserrat, and South Carolina, the council sat as judges with the governor in the court of chancery.† In Jamaica the governor sits alone as chancellor.‡ In Maryland also, prior to the revolution, the governor sat alone as chancellor, from whose decision an appeal lay to *the governor and council*, (by act of assembly,) setting as a *court of appeals*.

A Pretorial court.

The next of these judiciary bills was entitled, "An act for the erecting of a *pretoriall*,"§ the tenor of which was as follows:—"That all capital crimes of treason and felony, (by the laws of this province,) and all *enormous* offences|| whatsoever by the laws of this province, shall be finally heard and determined by or before the lord proprietary or his lieutenant general and the *council of state* for the time being;—and the secretary of the province for the time being or other register appointed by the lieutenant general shall record all matters and proceedings in this court, and the said lord proprietary or his lieutenant general and the said council, secretary, or register, or any three of them, (whereof the said lord proprietary or his lieutenant general and secretary or register to be always two,) shall be a court of record, and shall be called the *pretoriall*, or the *pretorial* court.¶

"And such forms of proceedings and trial upon information, indictment, or appeal, shall be used and observed in this court as are most agreeable to the laws of the province, or otherwise to the forms used and observed in England in the same or the

* See Stokes's View of the Constitutions of the British Colonies, p. 185.

† *Ibid.* p. 191, 196.

‡ Edwards's Hist. West Indies, B. 6, ch. 1.

§ See note (XXIX.) at the end of this volume.

|| This must allude to that class of offences specified in the bill before stated, entitled, "An act determining enormous offences."

¶ I do not find any subsequent mention in the records, of any court, within the province, after this bill or act of assembly, ("for the erecting of a *pretoriall*,") under the same denomination. It would seem, as if our colonists considered the word *pretorial* as synonymous to the word *provincial*; and although the *pretorial* court hereby erected was intended to be entirely a *criminal* court, yet, as the lieutenant general and council were constituted the judges of it, and as they were also, by the commission of the 15th of April, 1637, before mentioned, judges also of the supreme civil court under the denomination of the county court, as before stated, the two several jurisdictions, exercised by the same judges, became in process of time identified, under the denomination of the *provincial court*; for the establishment of which, under that denomination, no act of assembly was ever expressly made. This may be fairly inferred from the subsequent act of assembly of 1642, ch. 3, entitled, "An act for judges;" which will be remarked upon in its proper place.

like causes as near as the said court shall be able to judge, or otherwise such forms as the said court shall appoint or approve to be used and observed, in cases not provided by the laws of the province.

CHAP. II.
1639.

“And all *enormous offences* aforesaid shall be tried by the said court, and all capital crimes of treason or felony shall (upon an indictment by a grand inquest) be tried by a jury of twelve free-men to be returned by the sheriff.*

“And any lord of a manor indicted of any capital offence shall be tried by the said lieutenant general and by twelve or more lords of manors, (if there be so many within the county capable of such a charge,) or in default of so many lords of manors, then by so many lords of manors and freeholders of the county, (to be returned by the sheriff,) as shall make up the number of twelve at the least. And the said lords of manors and freeholders empannelled shall be called and judged his peers; and conviction shall be by the said lieutenant general and the said peers, or the major part of them, agreeing in their verdict.†

“And such judgment shall be given in all crimes and offences

* It would appear from this clause, that the *trial by jury* was not to prevail in criminal cases, except in those for treason and felony; and that persons indicted for those offences before enumerated, in the bill against “enormous offences, were to be tried *by the court*, without the intervention of a petit jury, the court being judges of both the law and the fact. Something like this has been lately instituted in the State of Maryland by an act of assembly, which authorises the court in minor offences, such as assaults and batteries, to determine *with the consent of the defendant*, the fact as well as the law.—Thus the leaders in a democracy, as well as the rulers in a monarchy, can sometimes slyly take power out of the hands of the people.

† This is a strong proof, among many other instances in our early records, that it was the intention of the first lord proprietary, and those first concerned with him in the government of the province, to have instituted therein an order of nobility, as he was expressly authorised to do by the fourteenth section of his charter. Although many manors were laid out and granted within the province by the lord proprietary, yet it no where appears on our records, that any peculiar privileges, such as appertain to peers of the realm in England, were ever claimed or at least enjoyed by the grantees of such manors. It may be conjectured, that the unlucky insertion of the clause,—“So that they” (to wit, the titles and dignities to be conferred) be not such as are now used in *England*,”—in the same section, spoiled the appetites of our first planters in Maryland for hereditary titles. That they always possessed a desire for hereditary honors and distinctions is evident from the excessive anxiety often manifested by them, as well as their fellow colonists of Virginia, to transmit the title of *colonel* of militia from father to son; and a governor of Maryland has been known to grant a commission of *colonel* to a wealthy planter merely because his father and grand father had enjoyed the same title, although there was not at that time any militia organized in the province. The revolution, alas! has not quite extinguished all our fondness for these things.

CHAP. II. whatsoever capital within this province, as is most agreeable to
 1639. the laws of this province; and such judgment shall be given in all enormous offences as the said lord proprietary or his lieutenant general and council, or the major part of them sitting in court shall think the misdemeanor, offence, or contempt, to deserve, for the correction of the delinquent, or the recompense of the party grieved, so that it extend not to the taking away of life, or member, and so that no fine, to the use of the lord proprietary, shall be levied upon judgment given in the court to above the fourth part of the clear personal estate of the party censured, or of the value thereof, according to a true and perfect inventory thereof to be made and appraised upon oath by two freemen of the county indifferently chosen by the sheriff, and entered in the record of the said court.”*

The authority of justices of peace, and their jurisdiction over certain specified offences.

In further provision for the administration of justice, the legislature proceeded to regulate the inferior branches thereof by a bill entitled, “an act for the authority of justice of the peace;” which appears to have been intended not only to confirm to them the common law duties of a justice of the peace as in England, but also to create certain specific offences not known in the common law, or to vary the punishments annexed to such offences as that law prohibits, and to vest in every single justice of the peace a summary jurisdiction over every such offence. The bill also appears to have considered the governor and each of the council, as justices of the peace, in virtue of their commissions; for it enacts,—“That these offences following in this act may be heard and determined by the lieutenant general for the time being or by any one of the councell or by any one having commission for the peace under the great seal of this province.”

The uncommon offences, created by this bill, or in which the punishments annexed thereto by the common law, were varied, were:—“Withdrawing of one’s self out of an English plantation to inhabit or reside among any *Indians* not christened, without consent of the lord proprietary or his lieutenant general, and the offender shall be imprisoned until he shall find security to perform the order of the judge therein.

“Swearing, which is the prophane adjuration by God or some holy creature, and the offender shall be fined five pound of tobacco or one shilling sterling to the lord proprietary.†

* Liber C. and WH. p. 15.

† Our cotemporary colonists in New England, about this time, always so ingenious in their notions, invented a more uncommon punishment for swearers

“Drunkenness, which is drinking with excess *to the notable* CHAP. II.
1639.
*perturbation of any organ of sense or motion,** and the offender shall forfeit to the lord proprietary 30lb. of tobacco, or five shillings sterling, or *otherwise shall be whipped*, or by some other corporal shame or punishment corrected for every such excess at the discretion of the judge.†

“Fornication, which is unlawful copulation between parties not married, and the offender or offenders *shall be publickly whipped*, or otherwise pay such fine to some publique use as the lieutenant generall and councill shall impose.

“Adultery, which is unlawful copulation where one partie is married, and it shall be punished as fornication, but with a *more painful whipping* or grievous fine.‡

than that prescribed above.—“Robert Shorthose, for *swearing* by the blood of God, was sentenced to have his tongue put into a cleft stick, and to stand so for the space of half an hour.” *Hutchinson's Hist. of Massachusetts*, vol. 1, ch. 5.

* This definition or rather description of drunkenness would comprehend a greater number of *gentlemen* grog drinkers in Maryland of the present day, than the diagnostics of the disease or offence laid down by writers on the common law. *Dalton*, in his *Justice of the Peace*, (a book of considerable authority, and first published but a few years prior to the first emigration of the Maryland colonists,) after stating the statutes of *James* relative to this offence, thus gives the rule for their construction.—“Now, for to know a drunken man the better, the scripture describeth them to stagger and reel to and fro,—*Job*, 12, 25. *Isaiah*, 24, 20. And so where the same legs, which carry a man into the house, cannot bring him out again, it is a sufficient sign of drunkenness.”

† These two clauses, relative to *swearing* and *drunkenness*, seem to have been partly copied from the English statutes of 4 *Jac.* 1, ch. 5, and 21 *Jac.* 1, ch. 7, and ch. 20, in force at that time in England. The punishment of drunkenness prescribed by our act, in one respect, exceeded that of the English statute, which directed only, that they should be put *in the stocks*, but not to be *whipped* as in our act, upon non-payment of the fine.—The quotation of the above clauses, however, is principally of use to shew the relative value of tobacco and money at this time in the colony. If, as we may suppose, the legislature intended, that the fine, whether in tobacco or money should be nearly the same, thirty pounds of tobacco at five shillings would be about two pence per pound, a price nearly at which it continued in England to the time of our revolution.

‡ Although it seems to be laid down by Mr. Justice *Blackstone*, (4 *Bl. Com.*) that neither of these offences—fornication or adultery were, either by the common or statute law of England, punishable as *temporal* offences, unless in case of the former, *bastardy* ensued; yet it is probable, that our provincial legislature, at this time, thought otherwise; and the cotemporary construction of the 18 *Eliz.* c. 3, to which he refers, authorising *corporal punishment*, in case of *bastardy*, without its being expressly so directed by the statute, seems to corroborate the opinion of our provincial legislature. The true construction, however, of our act as above, would appear to be, that the punishment of *whipping* was to be inflicted only in case of non-payment of the fine; agreeably to an old maxim,—*Qui non habet in ære, luet in corpore*. Subsequent acts of assembly, upon this subject, seem to warrant this construction.

CHAP. II. "Masters or mistresses refusing to give their servants neces-
 1639. sary or convenient food, lodging, or clothing, or to perform such covenants for wages or otherwise, as they are bound to do by their indentures or the law of the province; and the offender shall be imprisoned till he or she find sureties to perform the order of the judge therein; and the party offending or convicted the second time shall lose his or her right and benefit of the indentures, and of the law or custome of the country, and the servant shall be set free, except the master do appeal to the county court.

"Servants refusing to perform the lawful commands of their masters or mistresses, or of their assigns or overseer, or neglecting to do the labour which they ought to do, or unjustly complaining against their master or mistress, or offending any otherwise against their duty or indenture, and the servant so offending shall be publicly whipped or otherwise corrected at the discretion of the judge.

"Working in servile labour upon the Lord's day, or other holy days published aforesaid in the church to be kept as holy, without case of necessity to be allowed by the judge; and the master or mistress, or other freemen, offending therein, shall forfeit 30 lb. of tobacco, or 5s. sterling, for his own default, and 30 lb. of tobacco or 5s. sterling more for the fault of every his servants offending by his command or consent.*

* Although the number of Saint's day, which had been prescribed by the Catholic church to be kept as "holy-days," had increased so as to become a political evil to the community, yet the Church of England, at the reformation, did not entirely extinguish them. By the statute of 5 and 6 *Edw.* 6, ch. 3, entitled, "an act for the keeping holy-days and fasting-days," after a disavowal of the observance of holy-days, "for any of the saint's sakes, whose memories are had on those days," the particular days, besides Sundays, which were to be kept as holy-days, and on which bodily labour was to be abstained from, were specified, as also the particular days to be kept as fasting-days, confirming what had been before enacted on that subject by the statute of 2 and 3 *Edw.* 6, ch. 19, which the reader will find commented upon in the next note.—Also, by the 13th canon of the Church of England it was prescribed, that "all manner of persons, within the Church of England, shall from henceforth," (the time of making these canons was in the reign of James the first, in the year 1603,) "celebrate and keep the Lord's day, commonly called Sunday, and other holy-days, according to God's holy will and pleasure, and the orders of the Church of England, prescribed in that behalf." The holy-days enumerated in this statute of 5 and 6 *Edw.* 6, were probably the holy-days referred to in both the canon here cited and the above mentioned bill. The statute of 3 *Car.* 1, ch. 2, also provided "for the further reformation of sundry abuses committed on the Lord's day, commonly called Sunday."

"Eating flesh in time of lent or on other days, (Wednesdays CHAP. II. excepted,) wherein it is prohibited *by the law of England*, without case of infirmity to be allowed by the judge; and the offender shall forfeit to the lord proprietary five pound of tobacco or one shilling sterling for every such offence.* 1639.

"Shooting off three pieces in the whole within half a quarter of an hour one of another, (either by a single person or in answer to another,) without cause of alarm, or not answering an alarm by three pieces;—offender to forfeit to the lord proprietary 10 lb. tobacco for every piece so unlawfully shot off, and 20 lb. of tobacco for not answering an alarm.

"Fishing at the creek in St. George's hundred, commonly called the Herring creek, with sceyne or other unlawful net; and the offender shall forfeit his net or sceyne to the partie complaining thereof.†

"Provided, that if any offender be questioned for any of these offences in the admiraltie court, or county court, or before a justice of peace, that then such offender shall not otherwise be questioned or punished for the same, than in such court, which first questions the offender.—This act to continue till the end of the next general assembly."‡

Supplementary to the foregoing bills relative to the *judiciary* Inferior department of the government there was another providing for executive officers. the *executive* branch of the administration of justice, entitled, "an act for the appointment of certain officers;"—viz: a *tithing-man* in each manor, a constable in each hundred, a sheriff and coroner in the county, and a *public executioner* for inflicting all corporal correction and punishment.

The mode of appointing a *tithing-man*, prescribed by this bill, deserves some notice, inasmuch as it tends to corroborate

*See note (XXX.) at the end of this volume.

†This clause in the above act clearly demonstrates, what was the sense or opinion of those at the head of the government of Maryland at the time of its first colonization, relative to the *saving* clause of the sixteenth section of the charter, which has been supposed to reserve to every inhabitant of the province, and consequently to every citizen of the state, a free right, not only of fishing in all the navigable waters of the Chesapeake and its tributary streams, but also of landing on the shores and soil of any private individual, for the purpose of hauling his seine and securing his fish. Had this right been thus reserved by the *charter*, the provincial legislature could have had no power to make any law contrary thereto, and the above clause would consequently have been null and void.—See this subject before touched upon in the corrections and additions" to the introductory part of this work, vol. 1. p. 251.

‡Liber. C. and WH. p. 18.

CHAP. II. the supposition, that it was the original intention of the proprietary to vest in the lords of manors, to be erected in the province, privileges and powers analogous to the lords of manors in England.—“That the lord of every manor within this province, (after any manor shall be erected,) shall yearly at the first court baron held after Michaelmas in any year nominate and appoint some inhabitant of the manor, (not being of the council,) to be tithing-man of that manor, to have the same power as a tithing-man in England.”—The duties of a tithing-man in England were, at this time, nearly the same as those of a *petty constable*. They were usually chosen by the jury at the court leet,—a criminal court appertaining to a manor.

The appointments of *constables* of hundreds were thus provided for.—“And the *commander* of every hundred,* or otherwise (if there be no commander,) the lieutenant general of the province for the time being, shall, yearly at the first hundred court† in every hundred held after Michaelmas in any year, nominate and appoint some inhabitant of the hundred, (not being of the council,) to be high constable of that hundred, who shall execute all precepts and warrants to him directed, and shall in all things have the like power and authority within the said hundred, as a *high constable of any hundred in England* hath or ought to have within his hundred *by the law or custom of England*.”—A refusal to serve incurs a forfeiture of 500 lb. of tobacco.

“The chief judge of the county court shall nominate and appoint any inhabitant, &c. (not being of the council,) to be *sheriff and coroner* of the county, to have in all things the like power and authority within the county as a *sheriff or coroner of any shire in England* usually hath or ought to have *by the law or custom of England*.—Penalty on refusing to serve 2000 lb. tobacco.‡

* These *commanders* of small districts in Maryland were officers unknown to the common law of England, and borrowed from the same denomination of office used in Virginia. See it explained before in a note in p. 44.

† In the legislative arrangement of the courts of the province, prior to this period, I do not find any explanation of or provision made for the court here called a “hundred court;” except on the isle of Kent; nor is it easy at this day, to ascertain either its *origin* or *jurisdiction*. From the above bill the *commander*, who seems always to have been intended to act as a *deputy* of the lieutenant general, was the *judge* or one of the judges thereof. He was expressly so designated in the bill next mentioned “for the government of the isle of Kent.”

‡ These clauses serve to illustrate the manner in which the laws of England, both common law and statute, were first introduced into the province.

"And the said sheriff shall choose *one of his servants*, (and in case he hath no servant to accept thereof the lieutenant general and council shall appoint some person,) for the execution of all corporal correction, shame, or other punishment to be inflicted on the body or person of any one; and if the person so chosen and appointed by the lieutenant general and council shall refuse to execute the said office, the lieutenant general upon complaint thereof made unto him shall or may censure the person so refusing by corporal shame or correction as he shall think fit."*

CHAP. II.
1639.

Having thus provided for the administration of justice in that part of the province where the seat of government was fixed, the legislature proceeded to make provision for the like purpose in the isle of Kent, the only part of the province where any inhabitants appear to have been settled at this time, detached from the colonists in St. Mary's.† Accordingly there appears among these bills of this session one entitled, "an act for the government of the isle of Kent."—Although a *general* provision was made in the fifth and sixth sections of the act of 1638, ch. 2, for the administration of justice in the isle of Kent, as before stated, yet as those sections treat the subject in a very loose and indefinite manner, there appears to have been an absolute necessity for some more specific and minute arrangement thereof. This seems to afford some additional proof of the truth of the supposition herein before made, that this act of 1638, ch. 2, was intended as an abridgment of those bills, which, although not finally passed, yet were to be considered as explanatory or directory to more general expressions in the act. By this bill the isle of Kent was to be erected into a *hundred*, and called Kent hundred; which hundred was to be considered as being

The administration of justice in the isle of Kent regulated.

* The above bill is recorded at large in *Liber C. & WH.* p. 21.—The last clause of this bill, as above, is without doubt justly exceptionable, and the power of compelling a *man of credit and character* to perform the office of hangman or public executioner, ought not to have been placed in the hands of even the governor of the province. The act, however, would appear to admit of the construction, that none but persons of the degree of "a servant," were to be appointed to such an office. This principle was again reiterated in another act (1641, ch. 5,) much to the same purport, and, as we shall see in its place, received the pointed reprobation of captain Cornwaleys, the most influential man in the government of the province at this time.

† Although some inhabitants are mentioned to have been settled by Clayborne at the mouth of the Susquehanah, at the time of the first arrival of the first Maryland colonists under Calvert, yet there does not appear on the records of the province for several years after that arrival, any legislative or other notice of any inhabitants there settled.

CHAP. II. *within the county of St. Mary's*, until another county should be erected on the eastern shore. A court of record also was there-
 1639. by erected, to be called—the Hundred-Court of Kent; of which the commander of the said island was to be the judge, and from which court an appeal lay to the county court at St. Mary's. Provision was also made therein for the supreme court at St. Mary's to sit occasionally on the isle of Kent, apparently in the nature of a court of assize.*

Oaths of
office pre-
scribed.

A few additional observations are to be made on the fifth and sixth sections of this act of 1638, ch. 2, before stated. It is observable, that those sections require the lieutenant general and each of the council to take *an* oath,—the former, “to administer equal justice to all persons, without favour or malice of any one;”—the latter, “to defend and maintain the rights and prerogatives of the lord proprietary in all things, and to assist the execution of justice without favour or malice of any one, and to do all other things as becomes a councillor to do.” But although the *substance* of these oaths is here stated, yet no particular *form* of an oath is therein prescribed to either. There is strong evidence, however, to induce us to believe, that the oaths of office, here prescribed, were to be taken according to the *forms* prescribed in one of the bills of this session, entitled, “an act for the several oaths to be taken by judges and public officers.” Agreeably to this, we find, that at a court holden at St. Mary's, on the 20th of March, 1638, (1639, N. S.) the day after the assembly of this session rose, oaths of office were taken, manifestly according to the forms prescribed in this last mentioned bill, as appears from the following entry:—“The governor authorised the secretary to administer an oath to him for the equal administration of justice, &c.—Then were sworn captain Thomas Cornwaleys, esq., Mr. Giles Brent, gent., Mr. John Lewger, gent., in the *form* appointed for a councillor to take *upon the same bill*. Then was sworn the said John Lewger in the oath appointed for the secretary. Then was chosen and sworn for sheriff and coroner, Thomas Baldridge for one year. Then was chosen for treasurer of the province, Mr. Giles Brent. Then the governor authorised the secretary to administer to him the oath of allegiance, &c.;”† which *oath of allegiance* was therein expressly to be according to another bill of this session,

* See note (XXXI.) at the end of this volume.

† “Council Proceedings from 1636 to 1657,” p. 40.

entitled, "an act for swearing allegiance," which has been before stated and commented upon.* The oaths of office, therefore, to be taken, were manifestly also those prescribed by the other bill relative to "judges and public officers." In further corroboration of this, we find the following entry, under the date of April 15th, 1643:—"James Neal had the oath of a councillor of state administered to him by the said Giles Brent, according to the form of a bill drawn up in assembly, 15th of March, 1638, entitled, an act for the several oaths to be taken by judges and public officers."† This reference can be applied to no other bill than one of the thirty-six bills before mentioned of this session, under the same title.‡

The principal use of our notice of this subject is to adduce a very strong proof, that these thirty-six bills said to have been "twice read in the assembly, engrossed, but never passed," were notwithstanding considered as laws obligatory, in some measure at least, on the people of the province, and appearing to have been in several other instances, besides the one here cited, received and acted under as *laws of the province* in force. From the tenor of the fifth rule or order of the house, before stated, if a bill was "engrossed" after a second reading, and nothing more done with it, it could not be said to be "utterly rejected," the expression in the rule being in the alternative—"engrossed or utterly rejected." This, indeed, is consonant to modern parliamentary usage.§ It does not appear, therefore, that these bills were neglected and *not passed* on account of their demerits or any specific objections to them by the house. Some cause thereof operated at the time, but of what nature, it would be improper to hazard conjectures.

Supplementary to the foregoing arrangement of courts of justice and the necessary officers attendant thereon, some short notice may be here taken of the mode or *practice* prescribed by one of the bills of this session "for recovering of debts" in those courts.

By the bill entitled, "an act for recovering of debts," it was enacted, "That the *complainant* in any action of debt upon booke

The mode
of recover-
ing debts.

* See before p. 110.

† See the record-book in the council chamber, entitled, "Council proceedings from 1636 to 1657," p. 99.

‡ See the forms of these oaths as in the bill or act above mentioned, in note (XXXII.) at the end of this volume.

§ 1 Bl. Com. 183. Jefferson's Manual, sect. 31.

CHAP. II. or accompte shall or may sue his booke or accompt at the first
 1639. county court or at the hundred court of Kent, in October, or at any time after.

“And the *complainant* in any action of debt, after his action entered in the booke of the register of the said county or hundred court; and after *such caution given* for prosecuting of the cause, and performing the sentence of the court to be therein given, (as shall be reasonably desired of him,) shall or may have a precept under the hand of the register of the hundred court of Kent, or otherwise a *writ out of the chancery* directed to the defendant,* containing the whole tenor or effect of the plaintiff’s bill, and commanding the said defendant to underwrite his *answer* to the said *bill*, and to bring or send it so underwritten into the said county or hundred court, or to deliver it to the plaintiff, or to come to enter his *answer* in the register’s booke, (within a reasonable time limited,) or otherwise to be at the next county or hundred court, (naming the certain time and place,) to make answer to the said *bill*, and to bring with him his witness, accompts, and all muniments necessary for his defence upon pain of having judgment proceed against him at the said court in punishment of his contumacy.”

It will be perceived from these clauses, that the *practice* of these courts in all *civil* cases, especially for the recovery of debts, was intended to be assimilated more to that of the *court of chancery* in England, than to the practice of a court of common law. The peculiar situation of a colony, in its infant state, might possibly justify this departure from the English jurisprudence; but it is observable, that even at this day in the state of Maryland, a summary mode of trial is prescribed by law in the cases of *small debts*, and judgment therein to be given “according to the laws of the land, and *the equity and right of the matter*.”

The act then, after several clauses, providing for the attachment of debts in the hands of the defendant’s debtors,—regulating the service of “precepts and writs,”—also, the mode of trial, wherein the *wager of law* is expressly allowed to the defendant, and prescribing general directions to the sheriff relative to executions, has this singular clause:

“And where there is not sufficient distresse of goods, the *par-*

* It is proper to observe here, that agreeably to the ancient practice in England, the beginning or foundation of every suit in a *civil* case was a writ, called an *original writ*, taken out of the *court of chancery*—the shop or mint of justice, wherein all the king’s writs were framed. 3 *Bl. Com.* 272.

tie himself, or any his servants attached, shall be either *sold at an outcry*, or otherwise *his service valued* and appraised by the month as before,* and *delivered in execution* to the partie or parties recovering, according to the several proportions of their recoveries *to be his or their servant* so long as *until the execution be satisfied*, according to the rate of the parties or servant's labour appraised as before; and the greatest creditor recovering shall have first execution upon the body of such partie or servant attached, and so the rest in order according to the value of the debts recovered."†

Although the power vested by this clause in the creditor over the person of his debtor, compelling him to a temporary service in discharge of his debt, would sound harsh to the ears of a modern republican, yet it was in reality nothing more than the hardship, to which the adventurous emigrant, (the "servant" liable to execution by the act,) voluntarily entered into, when he executed an indenture, by which he stipulated to pay the expenses of his transportation from Europe to America, by a service for a specified number of years. So the thoughtless or fraudulent debtor, when he voluntarily contracted his debts, knowing the law upon the subject, might be said to have voluntarily also subjected himself to a similar hardship. It was not *slavery*, for that is a term properly applied to a service for life, arising from their condition *by birth*, and applicable to none in Maryland but negroes.‡ It must be acknowledged, however, that fraudulent artifices might be used by an artful creditor to inveigle a simple or ignorant man into his debt, with a view of drawing him into his bondage, and laws should not open a door to such oppressive practices. The right of a creditor to compel his in-

* The preceding clause directed, that "where an execution was served upon *one's servant* or other goods, &c., they should be sold at an outcry, or otherwise appraised and valued upon oath, and delivered to the plaintiff at their valuation."

† Taken from Liber C & WH. p. 38.

‡ This distinction seems to be explained by the learned English annotator (Dr. Harris,) on *Justinian's Inst.* (Lib. I. Tit. III. sect. 4.) *Quibus modis servi constituuntur*.—"Although absolute slavery, says he, "is now disused in Europe, yet a species of servitude is allowed among us, which is justifiable; thus, an apprentice is bound for a certain time, and for particular purposes, and men of full age may also, by contract, bind themselves for a maintenance either for years, or for life. But such a contract, made by the ancestor, is merely *personal*, and can by no means oblige *his posterity*. It must be added, that a person, bound to another for a term, does not labour under any civil capacity, but is entitled to all the legal privileges of other men; and in this, his condition is widely different from that of an absolute slave."

CHAP. II. solvent debtor to compensate him for his debt by *personal service*
 1639. has been, through all ages, a *vexata questio* in the science of legislation, and the duty of a historian does not here require a discussion of it.*

Officers for
the probate
of wills,
and grant-
ing admin-
istration.

Sect. (7.) "The secretary shall prove wills, and grant administrations, and use, &c., all power, &c., necessary thereto. And the commander of Kent to take order for the saving of the goods of deceased persons within that island, till a will be proved or administration granted."

6 Mr. John Lewger had been by his commission of the 24th of January, 1737, (old style,) appointed "commissioner in causes testamentary," as before stated. His powers and jurisdiction, under this act as well as under his former commission, were probably similar to what subsequently appertained to the office of commissary general of the province; while the power and duty of the commander of Kent, in respect to the estates of deceased persons on that island, seems to have been only that of one to whom letters *ad colligendum* had been granted, accountable therein to the secretary as supreme *ordinary* of the province.

Under this head may be arranged the *bill* of this session, entitled, "An act for succession to goods;" which seems to have been framed, in most parts of it, in conformity to the law of England on this subject, as it existed at this period of time; except in one particular, wherein our colonial legislature appears to be entitled to the honour of having anticipated the equity and justice of the English statute of 22 and 23 *Car. 2*, c. 10, commonly called the statute of distributions. It is known to lawyers, that prior to the statute of distributions an executor or administrator, after paying all the legacies and debts of the testator or intestate, might retain the whole of the *surplusage* of such testator's or intestate's personal estate to his own private use, nor could he be compelled by the ordinary or any court of law to make a distribution of such surplusage among the next of kin. A remarkable hardship of this kind, occurring between a brother and sister, about the year 1666, (18 *Car. 2*,) in which Sir *Walter Walker*, an eminent civilian, was counsel, he had in-

* This right of a creditor to the service of his debtor existed under the Athenian government, until such right was abolished by Solon, as being inconsistent with the Athenian democracy. The Roman *republic*, however, engrafted it into their *twelve tables*, most of the articles of which were said to have been borrowed from Greece. But one or two horrible instances of cruelty, practised under this right, occurring at Rome, the people would no longer bear it, and that part of the twelve tables was repealed or altered.

fluence enough, shortly afterwards, to get the statute of 22 and 23 *Car.* 2, c. 10, passed, to remedy the evil.* But our colonial legislature, in the year 1639, had done this in *substance* before them, by the before mentioned bill, “for succession to goods;” which provides, that “if upon the accompt of the administration there remain any goods of the deceased intestate, (after funeral expenses, debts, and other charges defrayed,) such *remainder* shall be divided into two moieties, whereof one moiety shall be allowed to the widow of the deceased intestate, and the other moiety to the child or children of the deceased,” &c.† and so on, nearly as is directed in the statute of 22 and 23 *Car.* 2, except, as will be perceived, our act gives a *moiety* to the widow, but the statute only a *third*.

Sect. (8.) “The captain of the military band, (at the direction of the lieutenant general,) shall use, &c., all power, &c., necessary or conducing in his discretion to the safety or defence of the province. And the commander of Kent to do the like with-in that island.” Military discipline.

A bill of this session, entitled, “An act for military discipline,” seems to have been intended to carry into effect the details of the above general clause. As it is the first *militia law* of the province, now extant upon record, the insertion of it here may perhaps gratify the reader’s curiosity.‡

Sect. (9.) “All officers’ fees to be paid *according to a bill upon the records of this assembly*: and all necessary public charges to be defrayed by the *treasurer* of the province, upon account of the colony or province, by warrant from time to time from the lieutenant general and council.” Payment of officers’ fees, and public charges provided for.

We see here in the first clause of this ninth section an express reference to one of the thirty-six bills before mentioned,—“engrossed but not passed, to wit, the one entitled “An act for fees.” This seems to carry with it an undeniable proof, that in the estimation of the members themselves of this assembly at this session, these bills, thus “engrossed but not passed,” were nevertheless to be considered as *explanatory* and directive to the general precepts and provisions of the act passed. Indeed, the *title* of the act, to wit, “An act ordaining *certain laws* for the go-

* See the case of *Hughes vs. Hughes*, *Carter’s Rep.* 125; and also 1 *Lord Raymond*, 574, and 2 *Bl. Com.* 516, where it is said, that the statute of distributions was penned by Sir *Walter Walker*.

† *Lib. C.* and *WH.* p. 34.

‡ See note (XXXIII.) at the end of this volume.

CHAP. II. vernment of this province," might bear the construction, of an
 1639. allusion to *other laws* not comprised within the body of the act.

The latter clause of this section seems to be further explained by another of the before mentioned bills, entitled, "An act for the common defraying of certain public charges." By this bill "the charges of all expeditions against Indians and other enemies, or rebels, (thought necessary by the lieutenant general and council,) were to be levied upon all the inhabitants of the province rateably to their *personal estates*, in such manner, and after such proportions, as the general assembly, or lieutenant general and council should rate and tax the same."*. From which it would seem, that *real* property or lands were not considered by the members of this assembly as forming a proper object of *direct* taxation. This might possibly be owing to the consideration, that such lands of the province, as were already granted, were sufficiently burthened by the annual payment of a quit-rent to the lord proprietary. The allusion also, in this bill, to "expeditions against Indians," indicates disturbances and hostilities of those savages, with whom our colonists were now on the eve of a war.

Derelict
property;
directions
concerning
it.

Sect. (10.) "If any goods be within the province without any challenging the same, and having right thereunto, the lieutenant general and council shall appoint, how the same shall be employed."

It will be recollected, that by the law of nature as well as the Roman civil law, whatever moveables are found upon the surface of the earth, or in the sea, and are unclaimed by any owner, are supposed to be abandoned by the last proprietor; and, as such are returned into the common stock and mass of things; and therefore they belong, as in a state of nature, to the first occupant or fortunate finder. The common law of England was the same, unless such goods or moveables fell within the description of waifs, or estrays, or wreck, or hidden treasure; for these are vested by that law in the king,† and consequently in the lord proprietary in Maryland, by virtue of his palatinate *regalia*. It may be supposed, therefore, that this section of this act was made to take away any uncertain right of an *occupant* in such cases, yet to leave it in the power of the governor and council to permit such occupant to retain the goods, where the

* See this bill abridged in Bacon's laws.

† 2 Bl. Com. 402.

peculiar merit of such occupant might appear to entitle him to them. This clause, it would seem, did not extend to *lands*, although no owner might appear to "challenge the same;" besides being confined to *personal* property by the word "goods," a particular provision was made at a subsequent session, as we shall see, "concerning deserted plantations."

Sect. (11.) "Where the goods of a debtor sued are not sufficient to pay all his debts within the province, they shall be sold at an outcry, and distributed equally among all the creditors inhabiting within the province; except that the mere and proper debts of the lord proprietary shall be first satisfied, and then fees and duties to public officers, and charges;* and that debts for wine and hot waters be not satisfied till all other debts be paid."†

Sect. (12.) "Every person planting tobacco shall plant and tend two acres of corn."

Although the rulers of the mother country, (particularly king James,) had done every thing in their power to discountenance the growth of tobacco in Virginia and the adoption of it as a staple product of that colony; which policy had been continued by his son Charles; yet, through want of some other means for the acquirement of wealth, and indeed for the procurement of those articles of English manufacture necessary for their comfortable subsistence as well as the cultivation of their crops, the growth of tobacco had been persisted in by the colonists of that province in spite of all opposition. This process of agriculture, like many other of the customs and habits of that elder colony, was adopted by the Maryland colonists very soon after their first settlement at St. Mary's. But as corn was essential to their existence, it seems to have been much apprehended by the government of Maryland about this time, that the colonists might experience considerable distress from the want of that necessary article of food, especially as the Indians, from whom they were in the habit of purchasing considerable quantities of it, began now to exhibit some symptoms of hostility. It was, therefore, deemed prudent policy to encourage the growth of corn, even at

CHAP. II.
1639.
A short insolvent law.

The planting of tobacco and Indian corn regulated.

* The "charges" here referred to most probably meant the "public charges" provided for by the bill of this session, before mentioned, for that purpose.

† It may be pardonable, perhaps, to observe here, that this legislative frown, (if we may so call it,) upon the excessive use of spirituous liquors, might be copied by our state legislature of the present day. The pernicious effects of our modern "hot waters," such as rum, brandy, and whiskey, on the morals as well as health of the people of this state, are beyond all calculation. They not only generate idleness, but thin the population of the country.

CHAP. II. the expense of checking that of tobacco. In explanation of this
 1639. clause in this act, it may be proper to state here also the substance of one of the bills of this session, entitled, "an act for planting of corn;" by which it was directed, that "every person planting tobacco was yearly also to plant and tend two acres of corn for his own food, and two acres of corn more for every person in his family planting tobacco, under the penalty of five barrels of corn, or other commodities to the value thereof, for every two acres of corn wherein he shall make default."*

Weights
and mea-
sures regu-
lated.

As the measurement of corn, when made, has a natural connection with the planting or growing of it, it will be proper to take some notice here of another bill of this session, next to the one last mentioned, as they appear on our records, entitled, "an act for measures and weights." This bill, after regulating "measures and weights" in relation to other articles, thus proceeds with respect to Indian corn,—“And all contracts made for payment in corn shall be understood of corn shelled; and a barrel of new corn tendered in payment at or afore the fifteenth day of October in any year shall be twice shaken in the barrel, and afterwards heaped as long as it will lie on; and at or before the feast of the nativity shall be twice shaken and filled to the edge of the barrel, or else not shaken and heaped as before; and after the said feast it shall not be shaken at all, but delivered by strike.”

Notwithstanding the expressions of this clause are somewhat obscure, yet it is plainly to be understood, that when speaking of "a barrel of new corn," it means corn *in the ears*, and not shelled, as in the preceding sentence.

As the regulation of weights and measures forms one of the most important articles in the police of every government, it was highly proper that the legislature of the province should make it a subject of its earliest attention. With propriety it adopted the usage and practice of the mother country, in relation to this subject, in all other respects than in that of corn. Indian corn not

* Taken from *Lib. C. & WH.* p. 57.—It may be proper to observe also, that similar regulations respecting the growth of corn had been adopted in Virginia. It is an article of the oldest law upon record in that colony, passed in the year 1624, "That three capable men of every parish should be sworn to see, that every man planted and tended corn sufficient for his family; and that those who neglected so to do, should be presented by the said three men, to the censure of the governor and council;" and in the year 1629 it was further regulated, "That every labourer was to tend two acres of corn or forfeit all his tobacco." See Burk's *Hist. of Virg.* vol. 1, p. 283, and vol. 2, p. 31.

being an agricultural produce of England or the British isles, CHAP. II.
no regulation thereof had ever there taken place. Some provi-
sion relative thereto in the province was, therefore, absolutely
necessary. It is probable, that the usage of *shaking* and *heap-*
ing, as described in this bill, was borrowed from Virginia, where
corn must have been now cultivated in considerable quantities.
It seems extraordinary, however, that the *mode* of measuring corn
by the barrel has never been precisely ascertained by law in either
the province or state of Maryland, and to this day, when corn
has been contracted for by the barrel, disputes frequently arise
on the mode of measurement.*

Sect. (13.) "All tobaccos shipped out of the province, (ex- Customs or
cept to *England, Ireland, or Virginia,*) shall pay a custom of duties on
five in the hundred." the export-
tation of
tobacco.

This clause, we may suppose, like the other clauses of this
act, had reference to one other of the before mentioned bills of
this session, entitled, "an act for a custom on certain tobaccos;"
by which five per cent. on all tobaccos exported, (except to
England, Ireland, and Virginia,) was given to the *lord proprie-*
tary.—In further explanation of this subject, it may be proper
to lay before the reader two clauses in the *instructions* to Sir
William Berkeley, on his being appointed to succeed Sir John
Hervey, as governor of Virginia, in the early part of this year,
(1639.) It will be recollected, as before observed, that two
colonial principles had been adopted by king Charles with re-
spect to his dominions in America; which were, that no tobac-
coes should be imported into England from any foreign country,
but from the American colonies only, and on the contrary, that
these American colonies should export no tobaccos to any fo-
reign country, but to England only.† But this latter prohibition
with respect to the exportation of tobacco from the colonies to
any foreign country seems to have failed in its intended effect.
The order of the king in council, before mentioned, is said to have
been either disregarded or eluded. However that was, the fore-
going section of our act of assembly demonstrates, that the Ma-
ryland colonists were at liberty at this time to export their tobac-
co to other countries than England, Ireland and Virginia. The
two clauses in the *instructions* to Sir William Berkeley afford

* As the regulation of weights and measures is a highly important subject under every government, the reader will find a full copy of this first essay towards it in our Maryland colony, in note (XXXIV.) at the end of this volume.

† See what is observed in the preceding chapter on this subject, p. 78.

CHAP. II. further proof, that this last mentioned order of prohibition had
 1639. lost its force also, as to Virginia. They are as follows:—"14thly.

Whereas many ships laden with tobacco and other merchandizes have thence carried the same directly to foreign countries, whereby his majesty loseth the duties thereupon due, there being nothing answered in Virginia; you shall be very careful that no vessel depart thence loaded with those commodities, before bond, with sufficient sureties, be taken to his majesty's use, to bring the same into his majesty's dominions, and to carry a lading from thence; that the staple of those commodities may be made here; whereby his majesty, after so great an expense upon that plantation, and so many of his subjects transported thither, may not be defrauded of what is justly due for customs on the goods. The bonds to be transmitted, that delinquents may be proceeded against.—15thly. To forbid all trade with any foreign vessel, except upon necessity: the governor shall take good bonds of the owners of tobacco, that it be brought to the port of London, there to pay such duties as are due."*—Although the prohibition of all foreign trade with Virginia was here again renewed, yet these *instructions* shew, that the former order in council, in this respect "was more honoured in the breach than the observance." The "duties" payable in London were said to be those payable under the statute of 1 Jac. 1, ch. 33, entitled, "an act of a subsidy of tonnage and poundage," by which the subsidy of poundage was granted to the king on all "goods and merchandize brought into or carried out of the realm, at the rate of twelve pence on every twenty shillings value," equal to "five in the hundred," as expressed in our act of assembly. It is further said also, that the exception in the clause of exemption from taxes in the *second* charter of Virginia, (of 1609,) relates to this statute; in which clause the king grants to the treasurer and company, "that they shall be free of all subsidies and customs in Virginia, for the space of one and twenty years, and from all taxes and impositions for ever upon any goods or merchandizes at any time hereafter, either upon importation thither, or exportation from thence into our realm of England, or into any other of our realms or dominions, by the said treasurer and company and their successors: except only the five pounds *per cent.* due for custom upon all such goods and merchandizes as shall be brought or imported into our realm of England, or any other

* See large extracts from these *instructions*, in *Chalmers's Annals*, p. 132.

of these our dominions according to *the ancient trade of merchants.*"* CHAP. II.

1639.

Although this charter, as well as the others granted to the old Virginia Company, had been long since dissolved, and the colony placed under a royal government, when the king would consequently have been entitled to any customs or duties, which should be imposed *within the colony* of Virginia on its exports or imports; yet the king, in these *instructions*, demanded nothing more than what was contained within the *exception* in the charter, to wit, the customs or duties payable *in England* on tobacco imported therein from Virginia. The like reservation to the crown of these customs or duties on goods and merchandize, to be imported from Maryland into England, seems to have been made in the eleventh and fifteenth sections of lord Baltimore's charter; which customs or duties so saved or reserved to the king in that charter, we may suppose to be those imposed by the before mentioned statute of 1 Jac. 1, ch. 33.—But in a subsequent section (the seventeenth) of the charter of Maryland, a grant is made to lord Baltimore of "the taxes and subsidies payable or arising within the ports, harbours, &c., *within the province*, for wares bought and sold, and things there to be laden or unladen." Hence, therefore, we are enabled to discern the power and authority of the assembly to bestow the "customs of five in the hundred," on the lord proprietary instead of the king. A reimbursement of the extraordinary expenses, to which the lord proprietary had been put in the settlement of the colony, operated without doubt with the assembly, as a cause of their legislative remuneration.

We proceed next to what may be called the great constitutional clause of this act:—

Sec. (14.) "The lieutenant general and secretary (or his deputy) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the free-men,) at any time hereafter assembled, shall be judged a general assembly."

The constitution of the general assembly more especially provided for.

The bill of this session, which is peculiarly explanatory of

* See this charter in Hazard's Collections, vol. 1, p. 68.—Chalmers, (in his Annals, p. 47-8,) observes upon this clause of *exception* in this charter, that "this duty was assuredly payable by virtue of the act of tonnage and poundage, which passed in the first year of king James; though that prince, turning his face from the parliamentary grant, considered the custom as due, according to *"the ancient trade of merchants."*

CHAP. II. this section of the act, must also be attended to. It is entitled, 1639. "an act what persons shall be called to every general assembly."—By this bill, (which was intended to be perpetual,) "every member of the council, and any other gentlemen of able judgment and quality summoned by his lordship's writ, and the lord of every manor within the province, (after manors be erected,) together with one, two, or more able and sufficient men, (as the freemen should think good,) elected for each hundred, in pursuance of writs issued for calling any general assembly, and *no other*, should have a voice, seat, and place in such general assembly. And every act therein made by persons so called, and elected, or the majority of them, and assented to by the lord proprietary or his lieutenant general, thereunto authorised by special warrant from his lordship, to be of as good force, as if his lordship and all the freemen in the province had been personally present at such general assemblies, and had consented to and approved of the making and enacting such laws. Provided, that all acts so approved by the freemen and by the lieutenant general in his lordship's name, should be of force until the lord proprietary should signify his disassent to the same under the great seal, and no further or longer."—The next bill of this session, entitled, "an act concerning the calling of general assemblies," requires also to be here mentioned. By this last bill, (intended also to be perpetual,) "assemblies were to be called once in every three years at the least, and the freemen assembled therein, to have the like power, privilege, authority, and jurisdiction, in causes and matters arising within this province, as the house of commons in *England* have had, used, or enjoyed, or of right ought to have, use, or enjoy, in any matters which have at any time happened or risen within the realm of *England*."

We see here a closer imitation of the English constitution, and especially of those parts of it which have been estimated as affording the greatest security to political liberty, forming what is called the representative system, than we could possibly have expected from either the temper of the times in which it occurred, or the peculiar political sentiments of those by whom it was enacted. It was now perceived, that even in the present population of the colony, it would be highly inconvenient, either to depend upon the assemblage of all the freemen in the province for the purposes of legislation, or to interrupt the occupation of a planter peaceably settled on some remote plantation, by calling

him to the performance of a duty, for which he was not in any manner qualified. That any freeman of the province should have a right to give his vote in the choice of any person in whom he might think it proper to repose his confidence to represent him as his delegate in the assembly, was deemed by the members of this assembly as a sufficient reservation of the natural right of every citizen to assent to laws, before he is bound by them.

An exceptionable part however, of the foregoing regulations appears in that which admits of "the summoning by his lordship's writ any other gentlemen of able judgment and quality," besides the delegates from the hundreds. As long as they continued to sit together in one body, and to enact laws by a plurality of voices, it would always have been in the power of the governor for the time being to create a majority in the house, by summoning particular "gentlemen," whom he well knew, would answer his purposes. This objection, however, would be in some measure done away, as soon as the legislature, (which afterwards took place,) was divided into two branches. As soon as the delegates from the hundreds obtained the secluded right of assenting to the laws according to the sense of their own body, the numbers, which might constitute the other branch or upper house, ceased to be an object of much importance. The principle of "checks and balances" remedied the evil. That the "lord of every manor" should also be entitled to a seat in the legislature, demonstrates an intention of the first rulers of the province, often before signified in other instances, to create an hereditary aristocracy in the province, which should, as it seems, from this bill, have been vested with an hereditary right to a seat in the legislature similar to the nobility of England.

The *proviso*, in the first of these two last mentioned bills, which was intended to secure to the lord proprietary his right of "disassent" to the laws, although the assent of his lieutenant general should have been previously given to them, seems to us at this day a principle, which must have been inconvenient to, if not inconsistent with, the good government of the province. Had the lord proprietary resided within the province, perhaps little inconvenience would have resulted from it. But that laws should have been suspended, as it were, over the heads of the inhabitants of the province, until his lordship's will, three thousand miles distant, could be obtained, does not comport with

CHAP. II. the pure administration of a free government. His lordship
 1639. should, either have resided within the province or considered himself as bound by the assent of his lieutenant. It is probable, however, that this right of "disassent" was one of the "rights and prerogatives" secured to the lord proprietary by the third section of the act of this session, as before mentioned.

The last of the bills just mentioned, entitled, "an act concerning the calling of general assemblies," merits particular notice; inasmuch as it seems to have been a legislative anticipation of some remarkable proceedings of the English parliament, which was called and held in the succeeding year, (1640;) at which session was passed a statute, (16 *Car.* 1, ch. 1,) entitled, "an act for triennial parliaments;" by which, (as observed by *Hume*,) "some of the noblest and most valuable prerogatives of the crown were retrenched, but at the same time *nothing could be more necessary* than such a statute, *for completing a regular plan of law and liberty*.* By an old statute, passed during the reign of Edward the III., it had been enacted, that parliaments should be held once in every year, or more frequently, if necessary: But as no provision had been made in case of failure, and no precise method pointed out for execution, this statute had been considered merely as a general declaration, and was dispensed with at pleasure. The king having dissolved the third parliament of his reign in the year 1629, with obvious marks of great displeasure, and having, as it is said, formed a resolution of governing without one, had neglected for almost eleven years to summon another. At last in March, 1640, (N. S.) he called his fourth parliament, but finding that instead of voting supplies, they employed themselves in the redress of grievances, he suddenly dissolved them after they had sat only a few weeks. Heartily regretting this measure, as it is said,† he summoned another parliament to meet in the November following; at which session was passed the above mentioned triennial act. It is evident, however, from this last mentioned bill of our provincial assembly, that the political sentiments of the English nation, which dictated the above mentioned statute, had previously travelled across the Atlantic. Yet it must be confessed, to be somewhat surprising, when we consider that the great majority of our Maryland colonists were of that sect of religion (the Catholic)

* *Hume's Hist.* ch. LIV.

† *Lord Clarendon's Hist.* B. II. p. 47.

which had been hitherto accustomed on all occasions to arrange CHAP. II.
1639. itself on the side of the prerogatives of the crown, and for which sect indeed, or a supposed attachment to them, it may be said, that the unfortunate Charles forfeited his life, that they should now, when transplanted into a distant country under their own guidance and direction, manifest as ardent a zeal for popular rights as their greatest enemies in England were now exhibiting. To account for this, we cannot but suppose, that many individuals of the puritanic sects either had mingled in the first Maryland emigration, or, driven from Virginia, had joined themselves with this Catholic colony, as being all equally *dissenters* from the established church of England, and therefore equally interested in plucking out the prerogative feathers of the royal bird. That some puritans were now resident in the province of Maryland seems evident from the incident before mentioned, relative to Cornwaleys' servants.* Be that as it may, we must acknowledge, that this bill of the present assembly, whereby "assemblies were to be called once in three years at the least," like the "act for triennial parliaments" deserves the highest eulogium. The subsequent part of the same bill, whereby the provincial assembly should be invested with "the like power, privilege, authority, and jurisdiction as the house of commons in England," further demonstrates, that the commons of Maryland and England were actuated with equal zeal in the maintenance of their liberties.

Sect. (15.) "All commissions from or under the lord proprietary, which shall be in force at his death, shall remain in the same force until a new commission for the government published under the great seal." The duration of commissions, in case of the death of the lord proprietary provided for.

In this clause also, our colonists appear to have anticipated the English legislature in a great improvement of the common law. By the common law of England the death of the king, called the demise of the crown, abrogated all *commissions* previously issued, and indeed occasioned a discontinuance of all process; but this latter inconvenience had been remedied by the statute of 1 *Edw.* 6, ch. 7. It was extraordinary, that when so many inconveniences must have resulted from this principle of the common law, and when the death of a fellow mortal was a casualty so liable to happen, that no remedy should have been applied to it by parliament; until the English revolution, which

* See before p. 83, 84.

CHAP. II. brought with it a happy cure for many evils, reminded them of
 1639. applying one to this. By the statute of 7 & 8 *Will.* 3, ch. 27, "no commission, either civil or military, shall become void by the death and demise of the king;" which was rendered still more precise and comprehensive by the subsequent statutes of 1 *Ann.* ch. 8, and 1 *Geo.* 3, ch. 23. As all commissions in Maryland issued in the name of the lord proprietary, who was supposed to possess, in virtue of his palatinate powers, royal prerogatives, his death would have been liable to a similar construction as that of the king. Our colonial ancestors were, without doubt, apprised of these inconveniences;—for, many altercations and discussions on this subject appear to have taken place in the courts of Westminster Hall soon after the death of king James.* Not perhaps so much alarmed at even the contemplation of the death of the lord proprietary as at that of the king, they could venture with less timidity to touch upon the subject. With a foresight and wisdom, which does them credit, they provided against the coming evil.

A water-mill; the building of one directed. *Sect.* (16.) "Any bargain, which the lieutenant general and council shall make with any undertaker, for the setting up of a water mill for the use of this colony, shall be levied upon all inhabitants of the colony, in such manner as the lieutenant general and council shall appoint, so it exceed not 10,000 lbs. tobacco in a year, for two years only."

7 A learned annalist of the British colonies has thought it worth observing upon this clause, that "we may easily estimate the numbers, and wealth, and power, of a people, who think it necessary, by *general contribution*, to erect a water mill for the use of the colony."† The *number* of colonists, who came to Maryland, in the first emigration to it, was, as we have before stated,‡ said to have been about two hundred. In the course of five years they might now have increased to about three hundred. But among these it was probable, that there were not above two or three wealthy persons among them; most of them being adventurers, who, though honest and creditable in England, sought to better their fortunes, as well as peaceably enjoy their religion, in this remote country. The rich English Catholics, though persecuted at home, would probably "rather bear the ills they had, than fly to others, which they knew not of."

* See *Cro. Car.* 1, p. 98.

† Chalmers's *Annals*, ch. IX. p. 214.

‡ See before, p. 26.

Hence, therefore, there might not have been any individual in Maryland, who would choose to risk his little capital in the costly structure of a water-mill, the profits of which might have been uncertain, especially as hand-mills, and other modes of preparing maize for food, were in early use with the colonists. This instance, however, of the slow progress of improvement in Maryland, was not singular in American colonization. The first water-mill built in Massachusetts, is said to have been in the year 1633,* when the colony had been planted about five years, the same length of time as Maryland.

CHAP. II.
1639.

The necessity at this time, of building whatever public edifices the colony had occasion for, "by contribution," is more particularly illustrated by a bill of this session, entitled, "an act for the building of a towne-house;" by which it was provided, that "every house-keeper should be *contributory* to the said building either in stuff, workmanship, labour, or tobacco, in such manner and after such rates proportionally to each man's *personal* estate."†

We have thus traced in detail the substance of the act of assembly of this session, entitled, "an act ordaining certain laws for the government of this province;" the principal inducement to which was, that it is one of the first acts of assembly of the province, of which any record now remains, and forms one of the principal sources from whence we can at this day derive any ideas of the early civil and political institutions of the colony. The several bills also, "engrossed but not passed," claimed also some particular notice; being the "certain laws for the government of the province," intended to be "ordained" by the act, and clearly illustrative and explanatory of the greater part thereof. There are a few of them, however, relative to some particular subjects, which do not appear to have been noticed in the act, but, for the reason just assigned, still demand some attention in this place.

The law of *descents*, from its well known effects in the structure of all civil society, generally claims the notice of every minute inquirer into the municipal institutions of any government. The bill of this session, entitled, "an act for the de-

* Holmes's Annals, *sub-anno* 1633. In the same year a saw-mill is said to have been erected near London; but as it was deemed to be a machine, which would deprive the labouring poor of employment, it was demolished, perhaps by the populace.

† See note (XXXV.) at the end of this volume.

CHAP. II. scending of land," requires, therefore, some attention; more especially as it contains, not only an express recognition of the common law of England, relative to *descents*, but also some important regulations in respect to the *limitation* of claims to lands,—to the appointment of guardians to heirs,—and to *escheats*; for, although these bills were for the most part expressly limited in the body of them to continue only "until the end of the next session of assembly," yet it is certain, that though for want of other regulations, they were for many years acted under as laws, and some of them subsequently re-enacted under the same or similar titles. The act of 1642, ch. 17, entitled, "an act touching succession to land," seems to have been only a revival of the clause in that of this session relative to the descent of lands to the next heir.*

Another of these bills, entitled, "an act for assuring of titles to land," seems closely connected with that last mentioned. It required, what would be of great utility at this day in the investigation of *titles* to lands, did it not appear to interfere rather too much with the *private* rights of individuals;—that the party producing a deed to be recorded, or if he "claimed by law only," should state "the special matter or title by which he claimed," and such statement should be recorded, and *proclamation* thereof made every year for three years, and if no person allege any thing to the contrary, such entry upon record should be a bar for ever to all other persons.†

Supplementary to these two last mentioned bills, relative to real property, may be mentioned another, entitled, "an act for enrolling of grants;" which consists merely of the following short regulation.—"No grant, deed, lease, conveyance, or estate hereafter to be made by the lord proprietary, of any lands, or office, shall be of any force or validity until such grant, &c. be enrolled by the secretary, or other person to be appointed."‡ This appears to be the only *legislative* authority, now to be found on record, for recording the patents of lands granted by the lord Baltimore. It will be recollected, however, that by the commission of April 15th, 1637, before stated, Mr. John Lewger was appointed "as well to be secretary and keeper of the acts and proceedings of the lieutenant and council for the time

* See note (XXXVI.) at the end of this volume.

† See note (XXXVII.) at the end of this volume.

‡ Liber C. & WH. p. 33.

being, as *for the doing and recording of all grants* by the lord proprietary and his heirs to be made of any lands or offices within the said province.”* CHAP. II.
1639. This might perhaps have been deemed sufficient authority for an usage certainly always or generally pursued under the provincial government. It is probable, that the affairs of the land office were considered so peculiarly appertaining to the private direction and control of the lord proprietary, as to make any subsequent *legislative* interference therein, either unnecessary or intrusive.

To promote the increase of the population of the province, as might naturally be expected, some anxiety seems to have been manifested at this time by those, who administered the provincial government. Accordingly, two bills of this session, apparently calculated for that purpose, were prepared, and which remain yet unnoticed. The first of them, entitled “an act for the peopling of the province,” was nearly as follows;—“If any persons, (to whom manors, lands, or tenements should be granted by the lord proprietary,) should not for three whole years together, have so many able persons, being christians, settled, &c. in or upon the same lands as are mentioned in the original grant thereof to be the consideration of granting the same, his lordship was empowered to grant or lease any part or parts of such unoccupied lands to any other person, for a life or seven years, and to receive the fine and first year’s rent.”† As somewhat explanatory of this bill, if the reader recurs to the first conditions of plantation, now extant upon record, dated August 8th, 1636,‡ he will find, that the *transportation of people* to inhabit in Maryland formed the principal condition upon which “rights to land” were to be acquired. But these people so to be transported, at the expense of others, who thereby proposed to acquire “rights to land,” were bound to make some compensation to those, who had either advanced the expenses of their passage across the Atlantic, or paid such expenses subsequently to their arrival. For that purpose written contracts were commonly entered into by the persons so transported, binding themselves to a service of a specified number of years. To prevent frauds in such contracts and possibly an unlimited servitude, appears to have been the intention of the bill of this session, entitled, “an act limiting the times of servants.” As this usage or mode of acquiring

* See note (VI.) at the end of this volume, before referred to.

† Liber C & WH. p. 34.

‡ See before, p. 38.

CHAP. II. white servants subsisted in the province for considerably more
1639. than a hundred years, from the first settlement thereof to the
declaration of independence, the curiosity of the reader may per-
haps be gratified by inserting a copy of this last mentioned bill,
the first upon record relative to the subject.*

* See note (XXXVIII.) at the end of this volume.

CHAPTER III.

Hostilities with the Indians—Preparations for training the militia—A further division of the county of St. Mary's—Lord Baltimore's right to the royal game of the province—Clayborne's demand of his property within the province—An assembly called—Their proceedings—Remarks on the acts of the session—Judicial powers exercised by the assembly—Animosity of the Indians—Session of assembly in 1641—Some few acts of assembly therein—The session of 1642—Their proceedings—Religious discontents—The acts passed at the last session—New conditions of plantation—Maryland settlements on the Schuylkill—Attempt in England to revive the old charters of Virginia—The effect of that attempt upon Maryland—War with the Indians—Another session of assembly in 1642—Proceedings therein—Remarks on some of the acts of this last session—Preparations against the Indians.

The proceedings of the last session of assembly, (of 1638-9,) together with the military preparations, which appear to have immediately succeeded it, exhibit strong proofs, that the happy harmony, which had hitherto subsisted between the natives and the colonists, was now at an end. These miserable aborigines of the country, particularly in Virginia and Maryland, seem to have been now generally sensible of their approaching ruin in the increase and permanence of the intruding colonists. Symptoms of a general discontent among all the tribes, inhabiting the shores of the Chesapeake, were now manifestly exhibited. It was about this period, that Opechancanough, the successor of Powhatan, and a chief, on whose heroic virtues the Virginian historians bestow high encomiums, must have begun to meditate that horrible massacre of the colonists of that province, which took place not long afterwards.* In Maryland also, the Susquehannocks, who have been represented as being the boldest and most warlike tribe of Indians found in the territories of Maryland, seem to have been also now engaged in hostilities against our colonists. It would appear from circumstances, that this warfare with them was brought on our colonists by their endeavours to stay the incursions of the Susquehannocks against the peaceable and friendly tribes of Piscattoway and Patuxent, and probably

CHAPT.
III.
1639.
Hostilities
with the
Indians.

* Historians differ as to the time of the massacre in Virginia. *Beverly*, (in his *Hist. of Virginia*, p. 49,) places it in the latter end of 1639 or beginning of 1640; but *Burk*, (*Hist. of Virg.* vol. 2, p. 54,) contends, that it must have occurred in the winter of 1641-2. Five hundred colonists in Virginia were killed at this massacre.

CHAPT. the Yoamacoës, with whom, it would seem, the Susquehanocks
 III. had never ceased to wage unintermitted hostilities ever since the
 1639. first settlement of the Maryland colony at St. Mary's, as has
 been before mentioned. Some eastern shore Indians also are
 said to have acted in such a manner as to make it necessary for
 the colonists at St. Mary's to fit out an expedition against them;
 but we are not informed, either what tribe they were or in what
 part of the eastern shore they inhabited. Our records afford but
 very scanty materials, indeed, for deriving any knowledge of
 these hostile proceedings. The principal document, relative to
 these transactions of the present date, appears to be an order by
 the governor and council, directing preparations for these milita-
 ry measures; and is, as follows:

“By the lieutenant general and council, 28th May, 1639.

“Whereas it is found necessary forthwith to make an expedi-
 tion upon the Indians of the eastern shore upon the public charge
 of the province, it is to that end thought fit that a shallop be
 sent to Virginia for to provide 20 corsletts,* a barrel of powder,
 four roundlets of shot, a barrel of oat-meal, 3 firkins of butter,
 and 4 cases of hot waters; and that 5 able persons be pressed to
 go with the said shallop; and necessary provisions of victuals be
 made for them; and that a pinnace be pressed to go for Kent† suffi-
 ciently victualled and manned, and there provide 4 hhds. of
 meal; and likewise that a pinnace be sent to the Susqueha-
 nocks,‡ sufficiently victualled and manned, and 30 or more good
 shott§ with necessary officers, be pressed out of the province,
 and that each of the shott be allowed after the rate of 100 *lb.* of
 tobacco per month, or another man in his room to tend his plan-
 tation, and 2 sergeants double the said rate; and that victuals
 and other necessary accommodations for the said soldiers and for
 all others, which shall go as volunteers, be made and provided,

* A corslett was a light armour for the fore part of the body; a species of cuirass; which was made of a thin iron plate well hammered; or a number of thin iron plates fastened together, and lapping over each other like the scales of fish.

† The isle of Kent.

‡ Although the expression here is—“to the Susquehanocks,”—yet from the remaining part of this order, as well as from subsequent documents in our records, it would seem, that this military force now levied was to go *against* the Susquehanocks, and not *to* their aid against others.

§ In modern phraseology in England, a good marksman with a gun or pistol is commonly called—a good *shott*. Although the word is not to be found in the best English dictionaries, in this sense, yet we perceive from the use of it as above, that it is an old English phrase.

and 2 pinnaces and 1 skiff, (if there be need,) shall be pressed and fitted for the transporting and landing of the said companies, and that good labouring hands be pressed to supply the places of such planters as shall be pressed upon the service, and be allowed after the same rate of 100 *lb.* per month.”

Signed by

“Leo. Calvert,
Giles Brent,
John Lewger.”*

CHAPT.
III.
1639:

Besides the equipment of this military force to be sent against the Susquehanocks, it seems to have been thought proper also to place the colonists, particularly those about St. Mary's, in a better state of defence than they had been. In the late act of the last session, (1638, ch. 2, sect. 8,) it had been provided, that—“The captain of the military band, (at the direction of the lieutenant general,) shall use all power necessary, or conducing in his discretion, to the safety or defence of the province. And the commander of Kent to do the like within that island.” The bill also, entitled, “An act for military discipline,” further provided for the details of the preceding clause of the act. In pursuance of these laws, as it appears, a commission was issued to Giles Brent, esqr., (then one of the council,) bearing date the 29th of May, (1639,) the next day after the above mentioned order, “appointing him to be captain of the military band next under our lieutenant general, requiring him to train and instruct *all the inhabitants of our said colony* able to bear arms, (those of our council excepted,) in the art and discipline of war on holidays and at any other time when there should be need; and by himself or his sergeant or other officer, once a month if he should find it needful, to view at every dwelling house within the said colony the provision of necessary arms and ammunition, and where he found any defect to amerce the party failing at his discretion, so that it exceed not 30 *lb.* tobacco for one default, and further to punish any delinquent in any kind offending against the discipline military.”* We may suppose, that in virtue of these laws and this commission, the inhabitants of the colony were immediately formed into a regular militia, and trained and disciplined accordingly.

Nothing further appears upon our records, which can throw any light upon the military or other transactions of the colony,

* “Council Proceedings from 1636 to 1657,” p. 41.

† “Council Proceeding from 1636 to 1657,” p. 38.

CHAPT. appertaining to the present year; except, that some few ideas of
 III. the nature of the trade carried on at this time by the colonists of

1639. Maryland with those of the Swedes on the Delaware, the Dutch on the Hudson, and the colonists of New England, as also of the internal traffic with the Indians, may be gleaned from one or two commissions of this year, still extant upon our records, in relation to those subjects. From these, it seems to have been lawful at this time for any inhabitant of Maryland, under the authority of a commission or license for that purpose, "to trade with any Indians within the province for corn, and the corn, so traded for, to export out of the province, and to trade the same with any people inhabiting to the northward of the capes, commonly called cape Henry and cape Charles, strictly prohibiting them from exporting any arms or ammunition to any Indian or foreigner whatsoever.*"

1640. The warfare with the Indians, which had commenced in the last year, seems to have still subsisted at the beginning of the next. From a commission issued to Nicholas Hervey, bearing date the 3d of January, 1639, (1640, N. S.) it appears, that certain Indians of the nation or tribe called the *Maquantequats*, had "committed sundry insolencies and rapines upon the English inhabiting within this province;" for which they had refused to make any satisfaction, as demanded of them. The government was therefore "compelled to enforce them thereto by the justice of a war." This commission therefore authorised Hervey, "with any company of English as should be willing to go along with him, so they exceed the number of twelve men sufficiently provided with arms, to invade the said *Maquantequats only*, and against them and their lands and goods to execute and inflict what may be inflicted by the law of war; and the pillage and booty therein gotten to part and divide among the company that shall perform the service."† From the express direction

* See the license or commission to Andrew Chappel, recorded in "Council Proceedings from 1636 to 1657," p. 42;—the conclusion of which commission is thus:—"We will that this our commission continue in force until the next return of the said Andrew or his vessel into our said province of Maryland.—Witness, Leonard Calvert, esqr., *admiral* of our said province. Given at St. Mary's this 11th June, 1639."

† See this commission in "Council Proceedings from 1636 to 1657," p. 42.—Although, by the ancient as well as modern usage of war, goods taken from an enemy, in what is called a solemn war, by soldiers or the army of a state, become the property of the sovereign power to which the soldiers belong, yet it was often the practice, being a subject of municipal regulation, to direct, that the "pil-

above, to make war *only* upon the Maquantequats, it is to be inferred, that the colonists were at peace with all other Indians; at least with such as lived in the neighbourhood of the Maquantequats. Correspondent with this supposition, a proclamation was issued not long afterwards, bearing date, January 24th, 1639, (1640, N. S.) declaring, "that we are in peace and amity with the Patuxent Indians our neighbours, and have taken them into our protection, and therefore do by these presents prohibit all English whatsoever within our province of Maryland for the time being, that they do not offer any injury or outrage whatsoever to any of the said Indians, upon pain of such punishment as the offence shall deserve."* It may be here remembered, that these Indians of Patuxent seem to have been hitherto uniformly friendly to the colony in conformity to the remarkable sentiment expressed by their king on the first landing of the colonists, as before mentioned.†

CHAPT.
III.
1640.

Some new regulations in the government appear to have now taken place, which, although not very important it may nevertheless be incumbent on us to mention. It will be recollected, that in the latter end of the year 1638, William Braithwayte, esqr., was appointed chief captain and commander of the isle of Kent, in military as well as civil matters; and he appears to have acted as such until the present time. But as captain Brent was now lately fixed upon as a proper person to train and discipline the militia of the province, as before mentioned, we are to infer, that he was a man possessed of some greater experience in military affairs, than most others in the province; unless he had been so advanced, through special favour, by reason of some alliance or affinity with the lord Baltimore's family.‡ However

Prepara-
tions for
training
the militia.

lage and booty," so taken in war, should be divided among the soldiers. See *Grotius de Jur. Bell. & Pac. b. 3, ch. 6, sect. 17.*—It differs from a right given to every soldier individually to plunder as he pleases; for besides being productive of less cruelty to the enemy, it produces a greater equality and justice in the distribution of the plunder, the worst soldiers being commonly most intent on pillage. *Ibid. sect. 18.* It is worth observing, that at this period of time, the warfare of the most civilized nations in Europe was constantly attended with a license to the soldiery to plunder. During the war, called the thirty years war of Europe, from 1618 to 1648, as a modern historian observes,—“the exactions of the officers, and the plundering of the soldiers was at that time, the chief part of the art of war.”—*Mod. Univ. Hist. vol. 42, p. 240.*

* “Council Proceedings from 1636 to 1657,” p. 43.

† See before p. 31.

‡ It appears from the land records of the province, (*Liber, No. 1.*) that Mr. Giles Brent and Mr. Fulke Brent his brother first arrived in the province on the

CHAPT. that was, it seems to have been now thought proper to transfer
 III. him to the command of the isle of Kent; the dangers arising
 1640. from the hostilities of the savages in that quarter most probably
 requiring a person of more military knowledge than Mr. Brainth-
 wayte. A commission was therefore issued to "captain Giles
 Brent, esqr., one of the council of our said province," bearing
 date, February 3d, 1639, (1640, N. S.) constituting and appoint-
 ing him "to be commander of our isle of Kent within our said
 province, to rule and govern the inhabitants and all other per-
 sons within our said island, according to the powers herein com-
 mitted to him."*

Although it is probable, that captain Brent went to the isle of Kent in pursuance of his commission, yet, if he did, he must have sojourned there but a few months; for, in August of this year the records recognize Mr. Brainthwayte again as commander of the isle of Kent, as we shall presently see.

A further
 division of
 the county
 of St. Ma-
 ry's.

In the mean time some regulations took place towards the further population and division of the province. All that part of St. Mary's county comprehended within the following metes and bounds, viz. "the two islands called St. Clement's isle and Heron's isle, and all the land over against the said islands on the north bank of Patowmack river between the creek commonly called the Herring creek on the east and St. Catherine's creek

22d of November, 1638. With them came two of their sisters, Mrs. Margaret Brent and Mrs. Mary Brent, the former of which ladies we shall have to mention again on a singular occasion. This family brought with them a considerable number of servants of both sexes.—It further appears, that in contemplation of capt. Brent's appointment as commander of the isle of Kent, he received the promise of a grant of a considerable quantity of land on that island; for, about a month before the date of his commission as commander thereof, an order was issued to the surveyor, as follows:—"7th January, 1639.—I would have you to lay out for Giles Brent, gent., treasurer, of the council of this province, one thousand acres of land, lying nearest together about Kent fort, and one thousand more where he shall desire it, and to certify Mr. Secretary what you do therein." The first mentioned thousand acres was accordingly laid out as directed, and by a grant thereof, bearing date the 7th of September, 1640, it was erected into a manor under the name of "The Manor of Kent Fort." The seite of this manor included all that neck of land now commonly known and called by the name of Kent point,—the southernmost extremity of the isle of Kent. The fort alluded to must have stood near to the first creek on the left hand when sailing up what is now called the eastern bay, after passing Kent point; and was, probably, the place, where Clayborne made his first settlements prior to the arrival of the first Maryland colonists under Leonard Calvert. This manor remained in the possession of persons of the name of Brent, (probably of the family of Giles Brent the grantee,) until some time during the American revolution.

* See note (XXXIX.) at the end of this volume.

on the west, and extending into the woods five miles any where from the said bank," was thought fit to be erected "into a hundred by the name of St. Clement's hundred." In consequence of which, commissions issued, (bearing date the 16th of March, 1639, (1640, N. S.) appointing Thomas Gerard, gent. conservator of the peace within the said hundred,* and John Robinson, of St. Clement's isle, "high constable" thereof. The powers vested in these officers by these commissions exhibit not only the state of the common law as it was then supposed to exist in the province in relation to the duties of such officers, but also a peculiar royal prerogative appertaining to the lord proprietary of the province. Mr. Gerard was appointed "conservator of the peace within the said hundred, as well upon the land as upon the water adjoining to it, with all powers and authorities belonging to any *two justices* of peace in England by the law or usage of England;" Robinson "to be high constable of the said hundred with all powers to a high constable belonging by the law or usage of England." The special duties prescribed in these commissions were:—To the justice of the peace,—“to use all power and means necessary for the preserving of any of our rights within the said hundred, either upon the land or water, and to punish according to his discretion with imprisonment or fine not exceeding † tobacco, with any corporal correction not extending to life or member, any offenders against our said rights, and specially such as shall destroy or disturb our game of herons upon Heron island by unlawfully taking either the fowls or eggs, or by shooting upon or near the said island, and to take to your own use the guns, nets, or any other instruments used by any offender to the disturbance or destruction of any of our game as aforesaid, and to apprehend and send to St. Mary's all unlawful traders with the Indians, and specially such as shall give or sell to any Indian any arms or ammunition, and to see that the inhabitants of the said hundred be provided of necessary and sufficient arms for their defence upon all occasions, and to do all other things necessary for the execution of the powers hereby committed unto you.”—To the constable,—“to inquire of and

* A great part of this hundred, with the exception of Heron island, had been, a few months before, erected into a manor, called "St. Clement's Manor," and granted (November 3d, 1639,) to Mr. Thomas Gerard, (most probably the same gentleman above mentioned,) with a clause in the grant, as usual, of holding a court-baron and court-leet therein. See Land Records, *Lib.* No. 1, p. 43.

† This blank so in the record.

CHAPT. present to our lieutenant general or other justice aforesaid all
 III. persons whatsoever, that shall unlawfully trespass upon any our
 1640. game of deer, turkies, herons, or other wild fowl or shall destroy
 their nests or eggs either upon our land or waters without leave
 of us or under, &c. and to take away their nets, hounds, or other
 means of taking them.”*

Lord Bal-
 timore's
 right to the
 royal game
 of the pro-
 vince.

Although by the law of nature animals *feræ naturæ* were liable to be made the property of the first occupant, who should take them; yet by immemorial usage most of the monarchies of Europe had appropriated these animals to be the exclusive right of the sovereign of the state. This, it is said, was to avoid disturbances and quarrels, which would else have frequently arisen among individuals, contending about the acquisition of this species of property. The common law of England, like that of the rest of Europe, to cut up this root of dissension, vested the right and property of these animals in the king, or else in his representatives appointed and authorized by him, being usually the lords of manors.† Thus the lord proprietary of Maryland, being by his charter invested “with all and singular such and as ample royal rights as any bishop of *Durham* ever heretofore hath had,” and the bishops of *Durham* having been, prior to the statute of 27 *Hen.* 8, ch. 24, possessed of all *Jura Regalia*,‡ (saving allegiance to the crown,) among which royal rights that of game must have appertained to them, the lord proprietary of Maryland, therefore, must have been, in pursuance or in virtue of this clause in his charter, invested also with this royal right to all animals *feræ naturæ*, since and then well known under the denomination of *game*, which were to be found within his province. This, perhaps, was the first instance of the exercise of this royal right by his lordship within his province. The state, since the revolution, has thought itself, it seems, entitled to this same prerogative by succession to the sovereign power; having made divers laws at different times for the preservation of the breed of wild deer, and for the protection of the fisheries, without which right they could not have legislated upon the subject, every citizen being equally entitled to gain a property in them by occupancy.§

* “Council Proceedings from 1636 to 1657,” p. 45.

† 2 Bl. Com. 14, 414.

‡ 1 Bulstr. 160.

§ The birds, which were considered in England about this time, (according to lord Coke, *Co. Litt.* 233, a.) as fowls of the warren, in modern language called

In this year also, William Clayborne, who appears to have been at this time still a resident of Virginia, thought it proper to make his application, through the medium of an attorney, for a restoration of his property left by him on the isle of Kent at his departure. What inducement led him to this proceeding does not appear; but it strongly wears the appearance at this day of a bravado to the Maryland government, calculating on the approximation of confusion through the near approach of a civil war in the mother country.—By a letter of attorney, bearing date the 8th of August, 1640, he appointed “George Scovell of Nancimim, in Virginia, his true and lawful attorney to ask, demand, recover, and receive for him, in his name and to his use, all sums of money, debts, cattle, and tobacco debts, and every thing whatsoever to him due or payable from any inhabitant of the province of Maryland.”—In virtue of this authority, Scovell presented a petition to the governor and council of the following purport:—“That captain William Clayborne, at his departure from the isle of Kent, left an estate within your province, as your petitioner is informed, amounting to a good value; since which time divers inhabitants within your province, are possessed of the said estate, but by what right your petitioner knoweth not.—Your petitioner’s humble request therefore is, the premises considered, that your worships would be pleased not only to allow of your petitioner’s letter of attorney, but also to grant unto him free power and liberty, together with your worships’ furtherance therein, for the recovery of the aforesaid estate in the hands of any, in whom it shall be found.”

“The answer” thereto is not long, but pithy, as follows:—

“What estate captain William Clayborne left with this province at his departure, undisposed of, on the 24th of March,

game, were “of two sorts, viz. *terrestres et equaliles*. *Terrestres* of two sorts, *sylvestres et campestres*. *Campestres*—as partridge, quail, rail, &c. *Sylvestres*—as pheasant, woodcock, &c.” Under this last head in Maryland we might rank wild turkies above mentioned,—a species of fowl, not inferior, perhaps, in the taste of the epicure, to the pheasant or woodcock. “*Aquatiles*—as mallard, *heron*,” &c. Either this last species of birds, (the heron,) must have vanished from our shores, or the taste of our modern sportsmen of Maryland must have varied from that of their ancestors, for these birds are not now held in any estimation.

The clause in the above commission to the justice of the peace, vesting in him powers equal to “two justices of the peace in England,” had, probably, relation to the then existing statutes of game, particularly those of 1 Jac. 1, ch. 27, and 7 Jac. 1, ch. 11, whereby the conviction of such offenders was vested in two justices of peace out of sessions.

CHAPT.
III.
1640.
Clay-
borne's de-
mand of his
property
within the
province.

CHAPT. 1637, the petitioner may know, that it is possessed by right of
 III. forfeiture to the lord proprietary for certain crimes of piracy and
 1640. murder, whereof the said William Clayborne was attainted the
 day aforesaid by judgment of the house of general assembly.
 If the petitioner can find out any of the said estate not possess-
 ed or held by that right, he shall do well to inform his lordship's
 attorney of it, that it may be recovered to his lordship's use;
 but if the said Clayborne, or any other to his use, have since
 the said day acquired any estate within the province, the law of
 the province, without any grant or furtherance of governor or
 commissioners, gives the petitioner or any other attorney of the
 said Clayborne, free power and authority to recover it, and,
 when it is recovered, such order shall be taken with it, as jus-
 tice shall require."*—We shall see, however, in a few years,
 Mr. Clayborne acting towards Maryland in a very different char-
 acter, than that of a petitioner.

An assem-
 bly called. At this period also, the calling of another assembly of the
 province, to be holden in the autumn of this year, was resolved
 upon by the government. In pursuance thereof, writs of elec-
 tion were issued to the several *hundreds* of the province, autho-
 rizing them to choose *burgesses* for their respective hundreds for
 the next assembly. As these writs are the only documents ex-
 tant upon record, which unfold the constitutional principles of
 provincial government in its earliest progress, it will be proper
 to exhibit at least the substance of some of them.

"Cecilius, &c., to our trusty and well beloved William Brainth-
 wayte, our commander of our isle of Kent, greeting; Whereas
 we have appointed to hold a general assembly at St. Mary's on
 Monday being the twelfth day of October next, these are there-
 fore to will and require you, that without delay you assemble
 and summon all the freemen of that island at a certain time and
 place to be reasonably by you prefixed, and there cause them
 to make election of any one or more burgesses for that island,
 (not exceeding the number of four,) and to make true return of
 the party or parties so nominated and elected by the said freemen
 or the major part of them to our secretary, before the said
 twelfth day of October.—Given at St. Mary's on the 14th of
 August, 1640."

The writs of election to the several hundreds of St. Mary's

*These proceedings bear date in the record,—“21st August, 1640;” see
 “Council Proceedings from 1636 to 1657,” p. 48.

county, varied somewhat from the above; as thus:—"Cecilius, &c., to all the freemen of our hundred of St. Mary's, greeting; We do hereby summon you to be *before our secretary* at St. John's on Tuesday next at one of the clock after dinner to make election of one or two burgesses for that hundred for the next assembly.—Given at St. Mary's, 12th of September, 1640."—The like writ to the freemen of St. George's hundred to be *before the sheriff* at a certain place, (therein mentioned,) within that hundred. The like to those of St. Michael's hundred to be *before the constable* of that hundred. The like to those of Conception hundred, Mattapanient hundred, and St. Clement's hundred to be before the particular person named in their respective writs.

In virtue of the lord proprietary's prerogative before mentioned, of summoning, by *special writ*, "any gentleman of able judgment and quality;" which prerogative right seems to have been recognized by the act of the last session, (1638–9, ch. 1,) and more particularly designated by the bill of the same session, entitled, "an act what persons shall be called to every general assembly," such *special writs* were in pursuance thereof now issued to several gentlemen, requiring their attendance at the assembly.—One of them as follows:—

"Cecilius, lord proprietary, &c., to our trusty and well beloved Giles Brent, gent., treasurer of our province of Maryland, and one of our council, greeting; Whereas we have appointed to hold a general assembly at St. Mary's, on Monday being the twelfth day of October next, we therefore much relying upon your judgment and advice in that assembly, do hereby will and require you, that you repair in person to the said assembly at the time and place prefixed, there to advise and consult with us touching the important affairs of our province."

Another of these *special writs*, on account of its singularity, deserves to be mentioned.—"Cecilius, &c., to our trusty Cuthbert Fenwick, gent., attorney within this province of our right trusty councillor, Thomas Cornwaleys, greeting; Whereas we have appointed to hold a general assembly at St. Mary's on Monday the 12th of October next, at which assembly we could have wished to have had the presence and advice of our trusty councillor Thomas Cornwaleys, which being not to be presumed upon by reason of his absence, nevertheless for the respect we bear unto him, and out of our care that so great a member of our province may have his attorney there to take care of such things as may con-

CHAPT.
III.
1640.

CHAPT. cern him, therefore we do hereby authorize you to repair personally to the said assembly, there to have place, voice, and seat, as our said councillor's proctor or attorney during his absence. Given at St. Mary's, 19th September, 1640."

Regular returns from the several hundreds, according to the before mentioned writs of election, appear to have been made, and directed to the secretary, specifying the names of the persons chosen as burgesses for their respective hundreds.

Their proceedings.

In pursuance of these writs the assembly met on the 12th of October, at St. John's, when "the house being called, all the gentlemen summoned by special writ, and all the burgesses that were returned from the several hundreds appeared, except Mr. Fulk Brent, whose absence was excused by the governor."

Some other proceedings of the house immediately on their meeting appear to indicate their ideas of the origin of the authority and power of the house.

"First, was read that part of the commission, which concerns the holding of assemblies."—This must allude to the *commission* to the governor, of the 15th of April, 1637, before stated.

"Then was read his lordship's proxy to the governor for giving his assent;"—which must have referred to the letter from lord Baltimore to the governor, of August 21st, 1638, stated before with the proceedings of the last session.

"Then was read that part of the act of last assembly, which ordained the house of assembly;" to wit, the act of 1638–9, ch. 1, before stated.

The journal of this session, as it appears on our records, affords but little matter worthy of observation. One measure, which took place on this first day, (October 12th,) may perhaps be deemed to merit notice, on account of its exhibiting the apparently confused situation of the foreign trade of the province at this time. "A proclamation," (as it is called on the journal,) relative to this subject, was "issued by the house of assembly," (a singular mode of proceeding for a legislative body, and would therefore, be more properly called a *resolution*,) in the following terms:—"It is strictly prohibited, that no person whatsoever go aboard any pinnace or other vessel, wherein are any goods imported to be retailed, nor do treat or deal, or give intelligence to or with the skipper, factor, or any seaman in any such vessel, touching any goods buying, or the rates and quantities of tobacco, or want of goods within the colony, before liberty of trade proclaimed at the fort, nor then at any higher or greater

rate than shall be proclaimed, upon pain of such punishment as shall be thought fit by the house of assembly, and further it is prohibited, that no merchant, skipper, or other seaman, contract or deal for any goods with any inhabitant, nor sell or utter any, nor shall land at any place in the province, but at the governor's landing-place, afore license obtained from the lieutenant general upon such pain and loss as shall be likewise thought fit, whereof they are hereby required to take notice at their peril. Given at St. John's, this 12th of October, 1640.—Signed William Britton, clerk.”*

CHAPT.
III.
1640.

Pursuant to this proclamation of the legislature, the governor (Leonard Calvert) issued his precept, on the same day, addressed—“To the sheriff of St. Mary's or his deputy,” requiring him to repair on board a pinnace, therein mentioned, for the purpose of preventing offences against the above proclamation. However, on the last day of the session but one, mention is made on the journal, of this proclamation being “reversed.”

The house did not agree to their “rules and orders,” until the second day of their session; some of which rules illustrate the constitutional organization of the house.

By the first of them, “the lieutenant general” was “to be called the president of the assembly,” that is, to act as speaker of the house.

By the second,—“*Ten* members of the house, whereof the lieutenant general to be always one, at any time assembled, with the clerk of the assembly, shall be a full house, except on the session-day it shall not be a full house under the number of *twelve*, as afore.”

This, however, seems repugnant to the act made at the last session, entitled, “an act for establishing the house of assembly,” &c., (1638–9, ch. 1,) since that act says,—“that any *twelve* or more shall be called the house of assembly;” which

*From this it appears, that the *secretary* of the province, (Mr. Lewger,) did not act as *clerk of the assembly* at this session, as he did at the session before; but Mr. Britton here appears in that character; and among the orders of the house on the first day of this session, it was “ordered, that the *clerk of the assembly* should have 5 shillings per day, and for every private draught, 12s;” but this *per diem* allowance of 5s. was altered on a subsequent day of this session to 50 lb. of tobacco per day.—This seems to afford us some probable *datum*, whence we may calculate the price of tobacco at this time, and the proportional rate when paid and received as a medium of commerce, which it bore to the current money of the province. If so, the nominal price of tobacco at this time in the province must have been ten shillings per hundred.

CHAPT. seems to imply that less than twelve should not make a house;
 III. and that twelve at least were requisite at all times to make a
 1640. house on every day of their session, as well as "on the session-day;" by which last expression must be meant the *first* day of the session.

By the fifth rule;—"Notice shall be given of the day of session, nine days before;" (This is obscure, but we may suppose it to mean, that after a prorogation or adjournment, notice should be given nine days before the first day of the next session;) "and at the session all the bills engrossed shall be read and severally voted, and such bills as are assented unto by the greater part of the gentlemen and burgesses shall be presented to the lieutenant general, and when he hath signed the bill it shall be recorded and published under the great seal of the province, and if the votes of the gentlemen or burgesses be equal the bill may not pass."*

Remarks
on the acts
of the ses-
sion.

A few animadversions on the acts of assembly passed at these first or earliest sessions, seem to be indispensably necessary. They are, indeed, together with the few proclamations and commissions still extant upon record, the principal materials of a provincial history. Care will be taken, however, to avoid a reiteration of remarks upon acts similar in substance to those before commented upon.

The first of the acts passed at this session, entitled, "an act for church liberties," is nearly *verbatim* the same as the first section of the second act of the preceding session; but the next, entitled, "an act for uncertain goods," varies somewhat from the tenth section of the act just mentioned of the preceding session. The former act directed, that "the governor and council should appoint, how such goods *should be employed*;" but this act is more definitive, by vesting the right to such goods in the lord proprietary. It may be remarked here, that this act of assembly was considered by Mr. Bacon, when he compiled the laws of the province, in 1763, as a law then in force. It does not appear to have been repealed between that period and the revolution; when the continuance of all acts of assembly then in force, together with the common law, was recognized by the declaration of rights.† This act is, nevertheless, omitted by

* For the proceedings of this session of assembly see the journal thereof in the book of the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 136 to 147.

† Sect. 3.

the succeeding compiler of all the laws of Maryland,* being deemed by him, as we may suppose, abrogated by the revolution. It would seem, however, that the same principle, which vested the *real* property of the lord proprietary in the state, (as the *vacant lands* of the province, which were never *expressly* transferred to the state, either by the declaration of rights, constitution, or any subsequent law, would also have transferred all his rights to any *personal* property. But, be that as it may, the subject matter of the law can so seldom occur, that its operation can be of little consequence at this day.

CHAPT.
III.
1640.

The next law of this session, (1640, ch. 3,) "for providing against sudden accidents in the government, seems to be, in part, but a re-enactment of the 15th section of the act of the preceding session, (1638-9, ch. 2,) before commented upon. It makes further provision against as great an inconvenience, as the preceding part of the act, (should such an incident happen,) in the following manner:—"and in case the lieutenant general shall decease or be absent out of the province without nominating or substituting another in his room, the first councillor of state residing at St. Mary's, shall exercise the office of lieutenant general in all points belonging to it until his return into the province, or that another be appointed by the lord proprietary." It will be recollected, that the "ordinance" or commission from the lord proprietary to his brother Leonard Calvert, of the 15th of April, 1637, before stated, vested a power in the governor, in case of his "absence out of the province," to nominate and appoint some other person, whom he should think fit, to be his lordship's lieutenant general of the province, and in case of the failure of the governor to do so, that the councillors for the time being should nominate and appoint such lieutenant general in his room. The governor, on his visit to Virginia in 1638, as before noticed, accordingly twice availed himself of the power granted him by that commission. This act seems to provide a more effectual remedy for one of the inconveniencies before mentioned than the ordinance, inasmuch as dissensions might arise among the councillors, each of whom would probably be a candidate for the office, so as to prevent their appointment of any one, in case of failure of the governor to do it. The designation of the appointment of the eldest of them, as directed by this act, seems, therefore, to have been a prudent provision. It is to be observed,

* It is not inserted by Mr. Kilty in his compilation of the laws.

CHAPT. also, that the act guards against the inconvenience resulting from
 III. the *death* of the lieutenant general, a circumstance omitted in the
 1640. ordinance, unless it be supplied by intendment, as we have
 ventured to do, in the copy of that document herein before
 exhibited;* which we shall see arise on the death of the
 present lieutenant general, but which was happily guarded
 against by a commission of the lord proprietary previous to the
 incident.

Two other acts of this session; one "for prohibiting the exportation of corn;" and another, "for the planting of corn;" would seem at first to indicate an apprehension of a scarcity at this time of that necessary article of subsistence for the colony; but two bills, with the same title as that of the last mentioned act, one at each of the preceding sessions, had been passed; from which it may be inferred, that these acts, relative to corn, were intended only as a cautious regulation of that agricultural produce; and licences for exporting corn appear to have been frequently granted for several years back.† In pursuance of this last mentioned act, however, "for the planting of corn," we find that, during the succeeding crop in July, 1641, a special commission "to the sheriff of St. Mary's," was issued by the governor, "requiring him to repair to every several plantation within the several hundreds of St. Mary's, St. Michael's, St. George's, and Mattapanient, and there, by all means that he may, to inform himself, whether every hand planting tobacco *this crop* do plant and tend two acres of corn, as the ground shall be estimated by the deputy surveyor, who is to accompany him for that purpose; the names of the defaulters and the quantity of their deficiency to be returned by him to the secretary."‡

The "act touching tobaccoes," of this session also, is the first *inspection* law, which appears to have been passed in Maryland. As this great staple of our former trade, and principal commodity of our agricultural produce, upon which formerly depended all the wealth of the province, is now happily ceasing to be in demand, and is gradually yielding to articles of more substantial value, the contents of this ancient inspection law will afford but little interest to the reader.§ It suggests, however, an animad-

* See note (VI.) at the end of this volume.

† Ante, p. 164.

‡ "Council Proceedings from 1636 to 1657," p. 56.

§ The reader will find an abridgment of this first Maryland *inspection* law, (made by the judicious Mr. Bacon,) in note (XL.) at the end of this volume.

version on a remark made by one of the oldest historians of Virginia, (a native of that province,) on the mischiefs accruing to Virginia from lord Baltimore's grant. He observes,—“that by this unhappy accident,” (that is, by the grant of the province of Maryland to lord Baltimore,) “a country, which nature had so well contrived for one, became two separate governments. This produced a most unhappy inconvenience to both; for, these two being the only countries under the dominion of England, that plant tobacco in any quantity, the ill consequence to both is, that when one colony goes about to prohibit the trash, or mend the staple of that commodity, to help the market; then the other, to take advantage of that market, pours into England all they can make, both good and bad, without distinction. This is very injurious to the other colony, which had voluntarily suffered so great a diminution in the quantity to mend the quality; and this is notoriously manifested from that incomparable *Virginia* law, appointing sworn agents to examine their tobacco.”* A remark made by Mr. Oldmixon,† on this passage just quoted, deserves to be here inserted:—“Whether the people of Maryland have not the same or the like complaints to make against the Virginians, is to be doubted, and that the industry and good management of that colony have set an example, even to her mother plantation, which it had been better with her if she had followed. We must leave this dispute to be decided by the gentlemen concerned in it.” Although this remark of Mr. Oldmixon might have resulted from a just resentment of Mr. Beverly's conduct towards him,‡ yet nevertheless it does not appear

* Beverly's Hist. of Virginia, B. 1, sect. 57, (edit. 1722.)

† Brit. Emp. in America, vol. 1, p. 239.

‡ These two gentlemen had a literary quarrel in England about their books. It appears, that while Oldmixon was compiling his work, (British Empire in America,) in the year 1703, the part of it relative to Virginia was shewn in manuscript to Mr. Beverly, a native Virginian of note, then in London, by the bookseller, who was the editor of it, in order that he should “overlook” and correct it. Displeased, as he says, with that part of the work thus shewn to him, he resolved himself to compile an account of Virginia, which should be published by itself, and not make a part of Oldmixon's work. This was accordingly done, before Oldmixon's work was published; so that this gentleman was enabled to borrow much from Mr. Beverly's Account of Virginia; retaining; however, as he says, such parts of his own previously compiled as rested upon other foundations than those of Beverly's work. How far it was fair among authors, for Mr. Beverly to anticipate Mr. Oldmixon, after the work of the latter was shewn to the former, will admit of much variance of opinion. It appears, that Mr. Oldmixon was vexed at this anticipation, and manifests his resentment at it in a variety of passages in his work. See the *prefaces* to each of these works.

CHAPT. to be destitute of foundation. Of what date this “incomparable” inspection law of Virginia was, we are not informed by the
 III. historian last mentioned; but, according to the latest historian
 1640. of that state,* “the original of the several laws that have been enacted (in Virginia,) concerning the inspection of tobacco,” was passed at the session of Assembly of that province, held in March, 1628.† This subject, he says, was “the first object of this body’s attention. The quality of their principal staple had become debased by the rage for producing a sufficiency to answer the increasing demands; and this deterioration had of late become so palpable, as to raise the clamors of the merchants, and to call forth the reproof of the king. Another evil, more immediately mischievous, was produced by this cupidity. The attention of the colonists to the articles of primary necessity, was sensibly relaxed; and they were alarmed all at once by the approaches of famine. To remedy this evil, an act was passed, limiting the culture of tobacco to so many plants per head; and sworn triers or inspectors were appointed to see, that the intention of the legislature should be strictly carried into effect. The culture of corn was at the same time commanded under severe penalties.” Whether this was the “incomparable” inspection law alluded to by the historian, or not, or whether there might have been some more improved legislative regulation on this subject, passed between this date, (1628,) and the time when he wrote, (1705,) to which he might here refer, cannot be of much importance to the dispute. Such complaints, as those made by this historian, could apply only to the times previous to this Maryland inspection law of 1640. As soon as this law passed we may suppose the evils complained of to have ceased; for, we are to suppose the inspection laws of each province to have been equally salutary. There seems then to have been but little foundation, existing at the time when this author wrote, (for he speaks of the “ill consequence” then existing,) for that splenetic regret, which he expresses, for the “unhappy accident” of lord Baltimore’s grant.

* Burk’s Hist. of Virginia, vol. 2, p. 24.

† Although the inspection law of this session of the Virginia assembly is thus said to be their original inspection law; yet it appears, that one of the *articles* of the first law now upon record in Virginia, (passed in 1624,) contains a regulation upon this subject in the following words:—“that men shall be sworn, in every plantation, to censure the tobacco.” See Burk’s Hist. Virg. vol. 1, p. 284; and Chalmers’s Annals, p. 64, who cites Stith, 318.

It is probable, that in imitation of the above mentioned policy of Virginia, "limiting the culture of tobacco to so many plants per head," a proposition was made in the first day of this session of the Maryland assembly, to limit the quantity of tobacco to be planted in Maryland; as appears from the following entry on the journal:—"Then was propounded some bill to be drawn for stinting the planting of tobaccos, but rejected." Soon after, however, another proposition was more successfully made in the house on the same day, as follows:—"Then was appointed a bill to be drawn for the destroying of unsound tobacco; which bill appears to have been the "act touching tobaccos" before mentioned. It may, perhaps, deserve notice, that the "president" of the assembly, (who was the governor, Leonard Calvert,) was among the dissentients to the bill.

CHAPT.
III.
1640.

One or two other occurrences of this session may also be mentioned. An instance again occurs at this session of the exercise of *judicial* powers by the house of assembly, which deserves notice principally on account of the unusual mode of commuting the punishment of the offender. The secretary of state, (Mr. John Lewger,) had, on the first day of this session, issued his writ to the "sheriff of St. Mary's," to "have the body of John Dandie, smith, before the house of assembly at nine of the clock this morning to answer to such crimes as on his lordship's behalf shall be objected against him." What these "crimes" were, does not appear; sentence of death, however, was passed upon him; but, on the tenth of May next succeeding, "upon the petition of a great part of the colony for the pardoning of Dandie, the governor exchanged the sentence of death into three years service to the lord proprietary, wherewith the said Dandie was well contented."*—In a subsequent document, bearing date June 12th, 1647, which purports to be a further pardon for John Dandie, it is stated, that "amongst other penalties he was adjudged to be *public executioner* within this province, but for his good services and particular fidelity to governor Calvert he was thereby remitted from all former penalties whatsoever."† There seems, however, to be some small error or omission here in the entry of this last mentioned pardon or remission; for, if he had "sentence

Judicial
powers ex-
ercised by
the assem-
bly.

* It ought to be observed here, that the lord Baltimore had one or more plantations or manors in the province, at this time, cultivated at his own expense and for his own immediate profit, on some one of which plantations, most probably Dandie was to serve, perhaps in his trade of a smith.

† "Council Proceedings from 1636 to 1657," p. 153.

CHAPT. of death" passed upon him, as appears by the records of this
 III. session, (of 1640,) he could not have been "adjudged" at the
 1640. same time "to be public executioner within the province." It
 is therefore to be understood, as having been one of the *conditions* of his pardon, that he should be "public executioner of the province," (an officer, whom it might, on account of the paucity of inhabitants, have been difficult to procure,) as well as serve his lordship on one of his plantations for three years. The common law authorised the king, and consequently the lord proprietary or his lieutenant, to pardon upon any condition or conditions whatsoever, which he might think fit, and the criminal would accept. It will be recollected, that by a bill of the last session, (1638-9,) entitled, "an act for the appointment of certain officers," the governor and council were authorised to appoint a *public executioner* of all *corporal* punishments.* They probably took this method of carrying the act into effect.

The other occurrence of this session deserving notice was as follows:—Mr. Thomas Adams, a member of this assembly from the isle of Kent, and who appears to have been a man of some note there, had uttered, most probably at the present session, disrespectful expressions concerning the lord proprietary. What these expressions were, does not appear. The journal however, states, that he was "for these indecent speeches touching the lord proprietary, censured to ask forgiveness of the lieutenant general; which he did." The reconciliation appears to have been complete on both sides; for, early in the succeeding year, (March 6th, 1640-1,) a special writ of pardon was granted to him, which set forth, "that for and in consideration, that Thomas Adams, one of our commissioners of our isle of Kent, gent., hath performed unto us acceptable service within our said island, and to the end he may be encouraged to do unto us and our heirs further faithful service within our said island and province, we do hereby fully acquit, remit, and pardon for ever unto the said Thomas Adams, all and all manner of *piracies* at any time heretofore committed by the said Thomas Adams against our peace and dignity within our said province."—From this it may be inferred, that Mr. Adams had been a coadjutor of Mr. Clayborne in his resistance to the lord Baltimore's authority in the isle of Kent, though now converted into a zealous friend to the lord proprietary.

* See ante p. 139.

This leads us to advert to some regulations made in the course of this year, relative to the lands held in that island. Many of the settlers there had received grants, of the lands possessed by them, from captain Clayborne. His claim being now probably deemed by the planters there ineffectual, they had ceased to cherish any further resistance to lord Baltimore's jurisdiction; and it is possible, that Mr. Adams had now become instrumental in allaying all former discontents. It was, therefore, thought to be proper at this period for the government at St. Mary's, to regrant new patents or grants of all such lands, as had been before granted by Clayborne, to the same persons, who held those lands under Clayborne's grants. This was accordingly done;* and in further regulation thereof a commission issued to the sheriff of the isle of Kent, bearing date the 7th of December, 1640, stating that—"Whereas, since our conditions of plantation, published in the year 1633, and since, divers persons have entered upon the isle of Kent and seated themselves, and taken up several parcels of land, whereby they became obliged to the rent reserved upon the said conditions,—these are, therefore, to will and require you to demand of every several tenant possessed of or claiming to any land possessed or claimed by every such tenant, viz. for every fifty acres twelve pence sterling or the commodities of the country; for every year that he hath been possessed of the same, for which twelve pence you may receive four pound of tobacco or one peck of wheat;* and whereas divers

CHAPT.
III.
1640.

* See the oldest record-book in the Land-office, *Lib.* No. 1, during the year 1640.

† If we may suppose these rates to have been fixed at the then *minimum* current price of tobacco and wheat within the province, we may take them as *data* to ascertain the proportional current value of these articles at this time in the province; which would be three pence per pound for tobacco, and four shillings per bushel for wheat. But, from this it would appear, that the current price of wheat was the same, or nearly so, in the province as it was in England. From the statute of 21 *Jac.* 1, ch. 28, sect. 3, (anno 1624,) it appears, that the current price of wheat at that time in England was thirty-two shillings per quarter, which is equal to twelve pence the peck, the value of the rents fixed by the commission. Hume, (in his Appendix to James the first's reign,) observes upon this, that the price of wheat, (as mentioned in this statute,) "though then regarded as low, would rather pass for high by our present estimation." The ascertainment of rents in produce at the above mentioned rates is not, however, *conclusive*, that such were the current prices of tobacco and wheat within the province at that time, but only *presumptive* evidence thereof. In like manner, in the bill, "for the authority of justice of the peace," in 1638-9, before stated, (p. 124,) the offender was to be fined "5 lb. tobacco or one shilling sterling," which, supposing that a shilling was meant as equivalent to 5 lb. tobacco, would make the price of tobacco at that time, about two pence farthing per lb. Tobacco must have fallen

CHAPT. persons are possessed of several parcels of land by virtue of a
 III. pretended grant from capt. William Clayborne, for the yearly

1640. rent of *two capons*, our will is that from such tenants you demand no more for the time past than the said *two capons* for every year that the rent hath been behind, and from such as shall be willing to commute the said rent into some other commodities, that you may take for every two capons sixteen pound of tobacco or one bushel of wheat;* and if any shall refuse or delay to pay their said rents and arrears of rent due in manner as aforesaid, then we do hereby authorise you, and withal will and require you to distrain for the same upon any the lands, goods or chattels of the party or parties so refusing or delaying, and such rents, as shall be by you received by virtue hereof, make accompt thereof to our receiver general at St. Mary's, who shall satisfy you for your pains therein, whereof fail not," &c.†

1641. The Indians, inhabiting within the limits of Maryland, seem now to have been permanently fixed in their irreconcilable discontent at the intrusion of the colonists. They not only annoyed the exterior or frontier settlers of St. Mary's county, in the plunder of their live stock, but on the eastern-shore rendered themselves formidable by their hostile conduct towards the inhabitants of the isle of Kent. At the latter end of the preced-

at this time, (1640,) both in Virginia and Maryland, very much in its value, from what it was in Virginia in 1618, when it was at three shillings per pound. The increasing quantity of it, now annually grown both in Virginia and Maryland would probably occasion this.

* This seems to be additional proof, that articles of food were nearly of the same prices in Maryland at this time as they were in England. Hume, in his Appendix just before cited, states a regulation of the market with regard to poultry and some other articles, very early in Charles the first's reign, and observes,—“the prices are high.” Among other articles of poultry he mentions,—“a capon two and six pence.” I would add, that Shakspeare, (who wrote but a few years before the first emigration of the Maryland colony,) has affixed nearly the same price to a capon, in drawing his inimitable character of Falstaff, whom he makes to be very fond of that delicious fare. In the bill or “tavern reckoning” humorously picked out of his pocket when he was asleep, by Poins and Prince Hal, is the following charge :—“*Item*, a capon, 2s. 2d.”—Mr. Clayborne, when he made his rents payable in this way, most probably followed some old English usage, and might moreover have had somewhat of Sir John Falstaff's epicurean taste. Capons appear to have been then considered as a delicious article of animal food. Shakspeare makes *Jacques* describe a justice of the peace, (in *As you like it*, written in the year 1600,)

“In fair round belly, with *good capon* lined.”

But either our modern epicures have varied from their ancestors in their taste for luxuries, or our good house wives have acquired more humanity towards the male sex of their poultry ; for, this dish is not now held in much estimation.

† “Council Proceedings from 1636 to 1657,” p. 51.

ing year, (1640,) the governor had authorised, by commission, the high constable of St. Clement's hundred, in St. Mary's county, to attend Mr. William Britton, gentleman, of that hundred, in demanding of the king or great men of some Indians, who had done him considerable injury in his swine, to make reparation to him, and warning them, that if such reparation be refused or delayed, that free liberty should be given to Mr. Britton, "to right himself upon any the persons or goods belonging to that town, by all means that he may."—Such petty plunders might be considered, indeed, as a natural result from the habits and customs of the American savages; but the inhabitants of the isle of Kent were threatened with more determined acts of hostility; insomuch that the governor was induced to issue, (on the 10th of July, 1641,) a proclamation to the inhabitants of that island of the following tenor:—"Whereas it is necessary at this present to stand upon our guard against the Indians, these are therefore to publish, and strictly to prohibit all persons whatsoever, that no man presume to harbour or entertain any Indian whatsoever after notice hereof, upon pain of such punishment as by *martial law* may be inflicted; and I do hereby authorize and declare it lawful to any inhabitant whatsoever of the isle of Kent, to shoot, wound, or kill any Indian whatsoever coming upon the said island, until further order be given herein."* The Indians thus in hostility to the inhabitants of the isle of Kent were most probably those denominated the *Ozinies*, whose principal residence or town seems to have been, according to Smith, at or near the confluence of the Corsica creek with the Chester river, in Queen Ann's county, and within fifteen miles from the Narrows or Strait, which separates the isle of Kent from the main. This tribe of Indians, according to Smith, in his History of Virginia, could then turn out, as he was informed, sixty warriors. Had these warriors been armed with fire-arms, they would have been a most formidable enemy, indeed, to the English inhabitants of the isle of Kent at that time, whose militia or fighting men did not probably exceed twenty-five in number, as appears from the number of voters thereon in the year preceding.†

From some cause, not apparent at this day, it was thought proper to call an assembly of the province about midsummer of this year. The *writs of summons* for that purpose, still extant

CHAPT.
III.
1641.

* "Council Proceedings from 1636 to 1657," p. 52 and 56.

† See ante p. 100.

Session of
assembly.

CHAPT. upon the records, expressly mention that the session was to be
 III. "held by prorogation;" from which it would appear, that the
 1641. assembly held in the preceding year, (1640,) had not been *dissolved*, but only *prorogued*. It is difficult, however, to reconcile this with the new elections, which took place immediately preceding the present session, in the several hundreds; as appears from the several *certificates*, returned to this assembly, and signed by the individual freemen of each hundred, designating the person by name, whom they had chosen as a burgess for their hundred. These certificates were, (according to the orders of the house, it seems,) read on the first day of the session, which was the 5th of August. One of them, as it indicates a material change in an important constitutional principle of the provincial government, requires notice. Mr. Thomas Gerard had, in the year 1639, obtained a grant of St. Clement's manor, as before mentioned,* which manor comprehended very nearly the whole of St. Clement's hundred. But, he being absent from St. Clement's hundred, perhaps out of the province, at the time of the election of a burgess for that hundred, which took place preceding the session of 1640, the freemen of that hundred certified, in the return made by them to that session, that "being but a small company in number they had made election of lieutenant Robert Vaughan as a burgess for that hundred, *who had been left and constituted Mr. Thomas Gerard's attorney.*"—Among the *writs of summons* issued for this session of 1641, one was addressed "to Thomas Gerard, lord of the manor of St. Clement's, gent.,"—requiring him to repair in person to the house of general assembly. This seems to have been in conformity to the prerogative right of the lord proprietary, as before mentioned, of summoning "gentlemen of able judgment and quality" to a seat in the assembly. But besides the writ of summons to Mr. Gerard, it appeared, on reading the certificate or return of election for St. Clement's hundred, that the freemen of that hundred had also elected him as their burgess for that hundred.—"Whereupon,"—(as the entry is in the record,†) "Robert Vaughan (then appearing for the said hundred) was discharged of his voice and seat; and *demanding to have voice in his own person* was refused." This seems to have been a legislative recogni-

* See before, p. 167.

† See the record book in the Council Chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 158.

tion of the total abolition of the right claimed by every freeman of the province, as before observed upon at the first settlement of the province, to a seat in the house of assembly, and which abolition appears to have been in pursuance and virtue of the act of 1638, (1639, N. S.) ch. 1, before referred to; by which act the several persons elected and returned, (pursuant to the writs issued,) should be called burgesses, and supply the place of all freemen consenting to such election, in the same manner, and to all the same intents and purposes, as the burgesses in any borough in England, in the parliament of England, use to supply the place of the inhabitants of their respective boroughs.”*

CHAPT.
III.
1641.

This assembly continued in session but a few days, and enacted only three laws; two of which require some notice. The first of them, entitled, “an act against fugitives,” was excessively severe, and beyond any modern idea of the due proportion between crimes and punishments. This act made it “felony of death, together with forfeiture of lands, goods, &c., for any *apprentice-servant* to depart away secretly from his or her master or dame, with intent to convey him or herself away out of the province; and for any other person that should willingly accompany such servant in such unlawful departure; unless his lordship, or his lieutenant general, should think proper to change such pains of death into a servitude not exceeding seven years.” This exceeded the punishment annexed to the same or a similar crime under the whimsical description of—“stealth of one’s self,” to which the benefit of clergy was allowed by the bill, entitled, “an act allowing book to certain felonies,” of the session of 1638–9, as before stated.† It is to be observed, however, that a clause appears on the journal of the house, of this session, which seems to have been intended by the legislature as an explanatory declaration of their meaning as to one part of this

Some few
acts passed
therein.

* The following certificate returned to this session from Mattapanient hundred, in St. Mary’s county, illustrates the mode, in which the freemen of these times exercised their important right of suffrage.

“MR. FENWICK.—We whose names are hereunder written do desire you to answer for us at the parliament, and we shall be much beholding unto you for the same.

Richard Gardner,
Richard Lustick,
Lewis Froman.”

See a document similar to this certificate, and nearly cotemporary as to date, which occurred in England, inserted in note (XLI.) at the end of this volume.

† See before, p. 123.

CHAPT. "act against fugitives."—"It was declared, that receiving of a
 III. runaway servant shall not include felony or misprision of
 1641. felony."*

The next act, entitled, "an act for measures," seems to be too short and obscure for the importance of the subject. A bill, entitled, "an act for measures and weights," was among those "engrossed" at the session of 1638-9, as was stated in the preceding chapter; but as nothing appears, relative to that subject, in the principal act "ordaining laws for the government of the province," (ch. 2,) the interference of the legislature might now possibly have been deemed again necessary.†—On this subject it may be observed, that the regulation of weights and measures appertained by the common law to the prerogative of the crown, and accordingly, even prior to the conquest, the standards of weights and measures were kept at *Winchester*; and it seems, that by the laws of king Edgar, near a century before the conquest, there was an injunction that the one measure, which was kept at Winchester, should be observed throughout the realm.‡ In *Magna Charta* also, (ch. 25,) it is enacted, that "there should be but one measure throughout the realm; and that it should be of weights as it was of measures."—If the Maryland colonists, therefore, took with them, on their first emigration, the benefits of the common law and of magna charta, there could not be a more important article thereof for their adoption than the regulation of weights and measures. It is true, that *Montesquieu*, (in his *Spirit of Laws*,) says, "It is a mark of a little mind in a legislator, to attempt regulations of this kind." But this mode of thinking seems to exhibit an example of that inattention to the convenience and comfort, and consequently the happiness, of the people generally, so observable in France under all their governments, even under that of their republic. On the other hand, these minute attentions of an English parliament to the domestic

* The words—"apprentice-servant," in this act of 1641, ("against fugitives,") varies from that of 1638, which uses the word "servant" only.—It is almost unnecessary to mention, that the word "servant" in these acts, and indeed in all the earlier records of the province, means exclusively—a white *servant* never being applied to negroes, who were properly called—*slaves*; as is frequently now done among the politer class of people in the state, copying therein, as usual, English customs and manners.

† As the regulation of weights and measures forms an important portion of the science of political economy, in order to assist any future philosophical economist in the investigation of this subject, the act above mentioned is inserted at large in note (XLII.) at the end of this volume.

‡ 1 Bl. Com. 274.

policy of the nation, form a principal groundwork in that civil liberty, which that nation enjoy in such a superior degree to any other. In counteraction to this—certainly weak remark of Montesquieu, it may be observed, that the execution of the laws relative to weights and measures was esteemed among the Romans of such importance to the public, that it was committed to the care of some of their most dignified magistrates—the curule ediles.* But a more pertinent reply to this remark of Montesquieu, is made by Mr. Justice Barrington, (in his *observations on the ancient statutes*.)—"He should rather have contended," says he, "that it does not shew wisdom to attempt what appears, by long experience, to be impracticable, though in theory it seems to be attended with no great difficulties, and much to be desired for general convenience: with us (in England) it hath occasioned at least six different statutes, all of which have proved ineffectual."—It is proper to observe, that one of these statutes on this subject was made in the same year with this act of assembly, of 1641.† Among the numerous grievances complained of in England, and which the *long* parliament, which had commenced its session on the third of November, 1640, had undertaken to redress, were those resulting from the "inequality of weights and measures," together with the improper exercise of the office of *clerk of the market*, who had a general inspection over the weights and measures throughout the kingdom. This parliament, therefore, by the statute of 16 Car. 1, ch. 19, enacted, "That from henceforth there shall be but one weight, one measure, and one yard, according to the standard of the exchequer, throughout all the realm;" and transferred the former power of the clerk of the market to the mayor, or other head officers of the cities, boroughs, and towns-corporate. The "standard of the exchequer" was, as to the bushel, the same as the *Winchester* measure, at which last mentioned place the standard had been kept prior to the conquest, as before stated.

CHAPT.
III.
1641.

* 4 Bl. Com. 274.

† The remarkable coincidence of time in the passing of the statute of 16 Car. 1, c. 19, here alluded to, and our act of assembly of 1641, ch. 2, is not unworthy of notice. The king gave his assent to the statute on the tenth of August, 1641, and our act was passed on the twelfth of the same month and year. The progress of civilization in a colony generally keeps pace with that of the mother country; but where the redress of a grievance is long delayed in the latter, a colonial legislature of the former, equally sensible of its effects, will sometimes precede the parent country in applying a remedy.

CHAPT. III. Upon reflection it would be improper to pass over, without
 1641. some notice, a material alteration made in the discharge of the ministerial duties relative to the probate of wills and granting administrations, by the other only remaining act of this session, entitled, "An act for causes testamentary." It will be recollected, that Mr. Lewger, the secretary, was appointed early in the year 1638, "commissioner in causes testamentary to prove the last wills and testaments of persons deceased, and to grant letters of administration." Prior to this, it would appear, that the governor and council, sitting as a county court, exercised all the *ministerial* as well as *judicial* duties of an ecclesiastical court, relative to the probate of wills and granting of administrations;* but, on this last mentioned appointment of Mr. Lewger, it is probable, that these *ministerial* duties devolved upon him, while the county court retained the *judicial* jurisdiction over controverted cases in relation to the validity of wills and the right to administration. The act of 1638-9, ch. 2, sect. 7, by enacting that "the secretary shall prove wills and grant administrations, and use, &c., all power, &c., necessary thereto,"†—seems to have confirmed to him these ministerial powers, while the bill, before stated, entitled, "An act for the erecting of a county court,"‡ expressly vests most of the judicial jurisdiction of an English ecclesiastical court in the then only county court of the province, which was, at the same time, the provincial court. This arrangement appears to have so continued, until this present act of 1641, ch. 3, entitled, "An act for causes testamentary," in which was inserted an express clause, that this act was "to *revoke* any former law concerning causes testamentary." The first and only material section was as follows:—"Whereas the laws of this province now in force have not sufficiently provided for the disposing of administrations and making just appraisement of the goods of parties deceasing within this province for remedy be it enacted by the lord proprietarie of this province of and with the assent and approbation of the freemen of this province, that the lieutenant generall or in his absence his deputy or otherwise the first councillor resident in the county shall prove wills and grant administrations and exercise all temporal jurisdictions to testamentary causes appertaining, and shall doe

* See before, p. 91.

† See before, p. 144.

‡ See before, p. 128.

or cause to be done right to all persons in all such causes according to the law of the province, and in defect thereof according to the law or laudable usage of England in the same or like cases, and where the same is uncertain or doubtful then according to equity and good conscience.”* A tribunal, distinct from the county court, appears to have been hereby erected, clothed with the “temporal jurisdictions to testamentary causes appertaining,” which were exercised by an ecclesiastical court in England, and moreover with the ministerial duties of proving wills and granting administrations. Whether the secretary continued to act as the “deputie” of “the lieutenant generall,” in the discharge of the same ministerial duties in this respect as before, does not appear. As he seems to have acted on all occasions, as the right arm of the governor, it is probable, that he did, for in a little more than a year from the passage of this act, we shall find him created by the same commission, which reappointed him secretary, “judge of all causes testamentary and matrimonial within the province.”

CHAPT.
III.
1641.

This short session of assembly was closed on the twelfth of August by prorogation to a future day. The entry on the record is thus—“The house prorogued by the lieutenant general in audience of the house till the next Monday after twelfth day, which shall be in the year 1642.” As the English Catholics sometimes followed the Gregorian calendar in their dates, there is no necessity to suppose an error here in the manuscript as to the year, but that the day on which the house was to meet again by prorogation, was some time about the middle of the January then next following. But, in the mean time, it seems that the governor thinking it proper to call the assembly again before the day to which it stood prorogued, issued his proclamation on the 18th of October for it to be held on the 29th of the same month. He, being absent however about that time, “out of the province,” as is stated, “the secretary in his absence prorogued the day of assembly until the twentieth of March following.” Notwithstanding this prorogation by the secretary, the governor appears to have deemed it proper to issue his proclamation also for calling an assembly;—“appointing to hold an assembly on the twenty-first of March next at St. Mary’s fort, and therefore every hundred to choose and send one or two burgesses to come to the said assembly, in such manner as hath been accustomed, and to take notice

1642.

* Liber C & WH. p. 73.

CHAPT. thereof at their peril. Given at *Kent fort*, 12th January, 1641.”*
 III. Several *writs of summons*, according to former practice, were
 1642. issued to several gentlemen by name to attend the assembly.† A writ also issued to the sheriff of St. Mary’s to assemble the freemen of each of the hundreds, viz: St. Mary’s, St. Michael’s, St. George’s, and Conception *alias* Mattapanient hundred to choose burgesses. Also a writ to the constable of St. Clement’s hundred to assemble the freemen of that hundred for the same purpose. Some variance is observable here from the practice of former elections, in which the writs issued to the freemen themselves of each hundred. But the writs for such purpose as now issued to the sheriff of the county was more conformable to the English law, and what was subsequently the usage of the province.

But notwithstanding these apparently regular proceedings for the election of burgesses, according to the constitutional law of the province before mentioned, the governor was induced to issue another proclamation, “published and proclaimed by the sheriff at the fort at St. Mary’s on the second of March,” (1642, N. S.) and a copy thereof sent to Kent on the thirteenth; the tenor of which proclamation seems to be in direct repugnance to what had been, to all appearance, permanently settled by the constitutional act of assembly of 1638–9, ch. 1, as the representative system of the government.

“Proclamation.—By the lieutenant general.—These are to publish and proclaim to all persons, inhabitants within this province, that I have appointed to hold a general assembly of *all the freemen* of this province on Monday being the one and twentieth day of this instant month, and therefore do require *all freemen whatsoever* to take notice hereof, and either to repair personally to the said assembly at the time and place aforesaid, or else to appoint and depute some other for their *proxy* or deputy during the said assembly there to consult and advise, touching the enacting of new laws and other important affairs of the pro-

* “Assembly Proceedings from 1637 to 1658,” p. 166.

† As these writs, by the established law before mentioned, were to be sent to “gentlemen of able judgment and quality,” mention of the names of those gentlemen to whom these writs were sent on the present occasion, lets us into some knowledge of the men who were considered as the leading characters in the province at this period of time: viz. Mr. Giles Brent, Thomas Cornwaleys, esqr., Mr. Fulk Brent, Mr. John Lewger, Mr. Thomas Greene, Mr. John Langford, and Mr. Thomas Gerard.

vince. Given at St. Mary's the 2d of March, 1541; signed Leonard Calvert."* CHAPT.
III.

1642.

We are to infer from this proceeding of the governor, as also from the complexion of some proceedings of the assembly at the session now to take place, that the spirit of discontent, which had now reared itself to such a height in the mother country, as to have placed the king and his parliament nearly in actual hostility to each other, had passed the Atlantic, and had diffused itself among the colonists of Maryland. It seems to afford some ground to suppose, that although the colony was originally intended by its founder as an asylum for Catholics, where they might enjoy their religious liberty without interruption, yet, as some few puritans, or protestants at least, had, as before mentioned, in 1638, been admitted into the colony, so by this time probably their number had so much increased as to create a formidable power not easily to be controlled by the feeble exertions of a provincial government. The governor might, therefore, be so far influenced by some such discontent of the colonists manifest by them at this time, as to acquiesce in their unwillingness to trust their affairs in the hands of burgesses or representatives, and to permit them to assemble as in a state of pure democracy, every freeman the representative of himself.

The situation of Ireland at this time, also, might have had some influence in the affairs of the province. The most formidable insurrection of the Catholics that ever took place in that kingdom, occurred in October of the preceding year, (1641,) and forty thousand protestants, as it is said,† were in a few weeks massacred by them with the most horrible circumstances of cruelty. It is a singular fact, however, that a little prior to this insurrection the Catholics and Puritans of Ireland appear to have formed a coalition against the royal party and English church. In pursuance of which, the committee of the Irish parliament appointed, in the year 1640, to carry the remonstrance against the earl of Stafford to England, was composed "of *vir-*

* At the foot of this proclamation, as on the record, is the following note:—"Published and proclaimed by the sheriff at the Fort of St. Mary's, the 2d of March, 1641.—The like proclamation was sent to Kent, 13th March."—See "Assembly Proceedings from 1637 to 1658," p. 170.

† In the declaration of both houses of the English parliament, they state the number of protestants massacred to have been 154,000. (See Rapin's Hist. Tindal's edit. vol. 10, p. 235;) but Hume, (in his Hist. ch. lv.) says, that "by the most moderate, and probably the most reasonable account, they are made to amount to 40,000."

CHAPT. *ulent Papists and rigid Puritans;*”* and even in the midst of the
 III. insurrection, Sir Phelim O’Neal, a descendant of one of their
 1642. aboriginal kings or cheiftains, and leader of the Ulster insurgents, “declared that he acted by authority of the English parliament.”† The conduct of the Irish Catholics could be imputed only to their hopes of re-establishing the Catholic religion on the ruins of the English church and state.

It seems extraordinary, however, that, amidst all this confusion in both Ireland and England, history does not present us with the slightest mention of the conduct of our lord proprietary—Cecelius, lord Baltimore. Being an Irish peer, and taking his title from a place called “*Baltimore*, in the county of *Longford*,”‡ one of those in which the insurrection first broke out, and, being also of the Catholic religion as his father had been, it was to be expected, that a man of his rank would have appeared in some character amidst the bustle of the times. It is probable, however, that being a prudent and cautious man and bound by gratitude to the king for uncommon favours to his father and himself, he now remained quiet in England as a private gentleman, unconnected with the excesses of either the Catholics in Ireland or the Puritans in England. This is rendered more probable, by the circumstance of his having the young earl of Ormond as his proxy in the session of the Irish parliament of 1634,§ a nobleman who was one of the sincerest friends king Charles had then in Ireland, and alike opposed to popery and puritanism. It may be added, that lord Baltimore might have been now particularly affected by the insurrection in the county of *Longford*, the more immediate or particular cause of which is said to have been the peculiar injuries sustained by the native Irish of that county by the plantations established there by king James,|| and which plantations, might have been part of the estates of lord Baltimore. Further additional causes for lord Baltimore’s neutrality during the civil war might be inferred from the general conduct of the English Roman Catholics at that time as to the king’s cause. The popish lords in England had about

* Leland’s Hist. of Ireland, vol. iii. p. 62.

† *Ibid*, p. 119.

‡ There is a town called *Baltimore*, in the county of *Corke*, in Ireland; but in *Beatson’s Political Index*, vol. iii. p. 147, his title is stated, as above,—“Baron Baltimore of Baltimore, in the county of *Longford*.”

§ Leland’s Hist. of Ireland, vol. iii. p. 19.

|| Leland’s Hist. of Ireland, vol. iii. p. 117.

this time, (1642,) withdrawn themselves from the English house of peers. Although this was said to have been done, to prevent "aspersions upon the votes of that house,"* yet it might have been in part the result of their indifference at least, if not hostility to the king's cause. There is some evidence, however, of their hostility thereto. It is assigned by a cotemporary and venerable historian,† as a probable reason, why so many papists espoused the cause of the Puritans and entered into the parliament's army, that the English Catholics fully expected, that the Puritans, if they succeeded, would allow "liberty of conscience for all religions." A fatal delusion! From the same authority we learn also, that the French ambassador, at that time in England, used his utmost endeavours to persuade the English Catholics, not to join the king's cause.‡ We are further informed also, that at the battle of Edge-hill, which occurred this year, on the 23d of October, (1642) several papists were taken prisoners by the king's army, and some popish priests found among the slain.§ To this general conduct of the English Catholics there were, however, some exceptions; one of which deserves to be here particularly mentioned, inasmuch as it tends to elucidate with some probability the political character and conduct of our lord proprietary at this period of time. Cecilius, lord Baltimore, had married lady Ann Arundel, the daughter of Thomas Lord Arundel of Wardour. This ancient family, (the Arundels,) numerous and wealthy in the west of England, at the time we are now treating of, were descendants from *Roger de Arundel*, who came over to England with William the Conqueror, (*anno* 1066,) and who was rewarded by him for his services with twenty-eight manors in Somersetshire after the conquest. Notwithstanding the reformation in England, the family appears to have continued of the Roman Catholic religion, though probably at times covertly and secretly so; and, as James the first always professed to bestow his honours indiscriminately upon any of his subjects, who deserved them, without regard to their religion, the eldest branch of the Arundel family, Thomas above mentioned, was created by him, in the year 1605, baron Arundel of Wardour in Wiltshire. Accordingly, as in gratitude they ought, the whole family appear to have been faithful and zealous in behalf of king Charles through

CHAPT.
III.
1642.

* Rapin's Hist. Eng. (Tindal's edit.) vol. x. p. 85.

† Lord Clarendon, in his Hist. (folio edit.) p. 250.

‡ *Ibid*, p. 367.

§ Rapin's Hist. England, Tindal's edit. vol. x. p. 116.

CHAPT. the whole of his distresses; and lord Arundel of Wardour, whom
 III. we may suppose to have been either Thomas the first lord Arun-
 1642. del above mentioned, or his eldest son and heir, most probably
 the latter, is stated to have been severely wounded at the battle
 of Lansdown in the service of the king in the year 1643. Another
 branch of the same family, Richard Arundel of Trerise in
 Cornwall, who with his aged father, eighty years of age, in the
 year 1646, so nobly defended Pendennis castle, near Falmouth,
 in Cornwall, the last refuge of royalty in the first Charles's reign,
 was, by the second Charles, on his restoration, created also bar-
 on Arundel of Trerise in Cornwall. The old gentleman, with
 his four sons, two of whom were killed in battle, had all em-
 barked early in the contest in behalf of their sovereign's cause.
 As their conduct was an exception to the general demeanor of
 the English Roman Catholics, so their reward on Charles's re-
 turn was an exception to his well known general ingratitude to
 his best friends. That the Arundel family constantly afterwards
 continued of the Roman Catholic religion, may be inferred from
 the circumstance, that Henry, lord Arundel of Wardour, whom
 we may suppose to have been the son of Thomas above men-
 tioned, was one of the popish lords, who were sent to the tower, at
 the time of what is called the popish plot in the reign of Charles
 the second in the year 1678. From all these circumstances it
 may be inferred, that, although lady Ann, (afterwards lady Bal-
 timore,) is said to have died in the year 1639, yet the influence
 of the Arundel family might have continued to prevail with lord
 Baltimore, so as to induce him, if not to take part in behalf of
 the king, yet at least to remain neutral and quiet during the civil
 war.

Their pro-
 ceedings.

On the day appointed, the twenty-first of March, the assem-
 bly met; forty-eight members, an unusual number, being pre-
 sent; six of whom had proxies for thirty more; and two gen-
 tlemen,—Mr. Lodington and Mr. Thompson,—“were admitted
 for the proxies of *all* the inhabitants of Kent.” From these
 circumstances, it would seem, that they did not assemble as the
 delegates or representatives of the people chosen by the freemen
 of each hundred of the province, as at the former session, but
 as an aggregate assembly of all the freemen of the province, in
 their own individual rights, except the freemen of the isle of
 Kent, and those, who, instead of attending themselves, consti-
 tuted some other freeman, who did attend, as their proxy.

The first business, which appears to have occupied the attention of the house, bespeaks the political sentiments of the people of the province; and demonstrates, that the fanaticism of politics, as well as that of religion, will penetrate even the seclusion of a wilderness. Until the passing of the statute of 16 Car. 1, ch. 7, (in May, 1641,) it had ever been deemed the undoubted prerogative of the king to *prorogue* or *dissolve* his parliament, whenever it appeared to him proper so to do. Among many other lawless exertions of the royal prerogative, Charles had undoubtedly exercised this branch of it in a most unjustifiable manner, particularly in the dissolution of the two preceding parliaments prior to the one now in session. The present parliament now sitting, denominated the long parliament, having gained a complete ascendancy over the power of the crown, and become enabled to dictate to the king whatever statutes they thought proper to be enacted for the security of the rights of the people and the privileges of parliament, among others which they prescribed to him, in the first year of their session, procured his assent to the statute just above mentioned, entitled, "an act to prevent inconveniences by the untimely adjournment of parliaments." By this statute the king renounced his power of either *proroguing* or *dissolving* the parliament then sitting, so that they hereby became a permanent body, subject only to their own adjournment, prorogation, or dissolution; and remained so until Cromwell, with a file of musqueteers, in the year 1653, marched them out of the house. A year had not quite elapsed after the passage of the statute, (although sufficient time intervened for the spirit, which dictated it, to cross the Atlantic,) before our colonists, in *their* little parliament assembled, undertook to imitate the conduct of their great prototype—the legislature of the mother country; though as it appears to us at this day, without any of those provocations, which the exercise of the royal power in England had too unhappily afforded. Our assembly accordingly, on the first day of the session, prior to any other business, as it appears, made the following resolution, as it is entered on the journal of the house:—"It was declared by the house, that the house of assembly may not be adjourned or prorogued but by and with the consent of the house."—It will be recollected, that the last session of assembly had been closed by *prorogation by the lieutenant general*, but no circumstance appears to have attended that fact, from which we could

CHAPT. even infer any inconvenience to the people or cause of dissatisfaction. It was an exercise of the lord proprietary's prerogative, which had been used and practised at every preceding session of assembly of the province. Nay indeed, at the first session, of which any record remains, (in 1637-8,) the house appears to have been even "adjourned" from day to day by the "president," that is, by the governor or lieutenant general, who acted as speaker or president of the house.* It may not, perhaps, be useless to mention, that according to the law of parliament in England, (which is, indeed, a part of the common law of England,) the difference between an *adjournment* and a *prorogation* of parliament is,—that "a *prorogation* is the continuance of the parliament from *one session to another*," but "an *adjournment* is a continuation of the session *from day to day*." The former is done by the royal authority, the latter by the authority of each house separately every day, though sometimes also for a fortnight or a month together.† Although this prerogative of prorogation was not granted to the lord proprietary by his charter in *express words*, yet such power may be fairly inferred from the tenor of that clause therein, which confers on him legislative powers.—"Know ye, that we do grant unto the said now baron and to his heirs, for the good and happy government of the said province, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact laws, according to their sound discretions, of and with the advice, assent, and approbation of the freemen of the same province, or of the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore and his heirs, and in the form which shall seem best to him or them."—"So nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but, (so far as conveniently may be,) agreeable to the laws, statutes, customs, and rights of this our kingdom of England."—Now, although the *form of calling the freemen together* to make laws is hereby left to the discretion of the lord proprietary and those freemen, yet, as the saving clause, at the end of the section, provides, that those laws shall be consonant to the laws of England, it is no strained construction, to say, that even the *form of making* those laws, that is,

* See the proceedings of the session of 1637-8, stated before, in p. 59 and 63.

† 1 Bl. Com. 186.

of adjourning, proroguing, or dissolving such assembly of the freemen, shall be also consonant to the laws, &c. of England. In short, that English parliamentary usage, or the law of parliament, shall be adopted by the provincial legislature. It cannot be too often repeated, that from this close imitation of the English constitution, throughout all the other provincial governments of America, as well as Maryland, have resulted all these free political institutions, of which the United States can now boast.

CHAPT.
III.
1642.

The hostilities, which still existed between our colonists and the Indians, occasioned some proceedings in the assembly relative thereto. "A bill for the expedition against the Indians," was, on the second day of this session, introduced into the house, though it does not appear to have passed into a law during this session. Mention of it, however, is made on the journal in the following words:—"Then was read the bill for the expedition against the Indians, and voted by the greater part, that it was not to be left entrusted to the discretion of the lieutenant general and council."—Why this jealousy was entertained against the governor and council, is not to be satisfactorily accounted for. Causes for it might have existed, of which our scanty records of these times afford no explanation. In the absence of any evidence of other causes, it is not improper to suggest, that the dispute, which then prevailed between the king and parliament, relative to the right of commanding the *militia*, was at the bottom of this vote of the assembly. This subject will occur more fully hereafter.

Religious discord also,—that horrible hydra with its hundred heads,—seems to have now first reared its crest within the province. The petty bickerings between Cornwaleys's servants, before mentioned, could wear no serious aspect. The English Catholics might have still indulged themselves with the pleasing vision of having carved out, in the forests of Maryland, a happy asylum for all the persecuted of their sect. But, as it is probable, that they had not the power of excluding the settlement of *Protestants* within their colony, it being subject to the mother country, they soon found themselves liable to the intrusions and disturbances of heretic adventurers from the contiguous provinces as well as Europe.

Religious
dissensions

So zealous and firm had the colony of Virginia hitherto been in the support of the church of England, that shortly after the arrival of Sir William Berkeley, as governor of that province,

CHAPT. (which was in 1639,) several laws had been made against the
 III. Puritans, "though there were as yet none amongst them ;" but by
 1642. way of anticipation,—“to prevent the infection from reaching the
 country;”^{*} and so rigorous were these laws, as well perhaps in their
 execution as their tenor, that “none but conformists,” (it is said,)
 “in the strictest and most absolute sense, were permitted to reside
 in the colony.”[†] Some few Puritans, however, must have secretly
 lurked in that province at this time ; for, in the year 1641, as
 we are informed, Mr. *Bennet*, (then of Virginia,[‡] and without
 doubt, a zealot of the puritanic sect of congregationalists,)
 “went to Boston, in New England, to desire, in the name of
 some other gentlemen of Virginia, that two or three ministers
 might be sent to them.”[§] To this purpose Mr. *Bennet* carried with
 him letters from several pious people in Virginia,” to the minis-
 ters of New England, earnestly soliciting a supply of faithful
 ministers. At a lecture in Boston three ministers were agreed on,
 for the solicited mission. || They were sent in the present year,
 (1642,) with letters of recommendation from the governor of
 Massachusetts to the governor and council of Virginia. Al-
 though they were kindly entertained by private persons, as it is
 said, probably by those who sent for them, yet their residence in
 Virginia was short, for they returned the next summer. In this
 same year, in consequence most probably of these movements
 of the Puritans, the assembly of that province passed an act to
 prevent dissenting ministers from preaching and propagating
 their doctrines in that colony.[¶] In virtue of this law, as it

^{*} *Beverly's Hist. of Virg.* p. 51.—*Burk's Hist. of Virg.* vol. 2, p. 75.

[†] *Burk's Hist. of Virg.* vol. 2, p. 67 ;—who exemplifies this in the case of one *Stephen Reck*, who, about this time, (1642,) was set in the pillory two hours with a label on his back expressing his offence, fined £50, and imprisoned during pleasure,—for saying, his majesty was at confession with the lord Canterbury.

[‡] This is probably the same Mr. Richard Bennet, who subsequently, as we shall see, was one of the commissioners, appointed by the council of state in England, in the year 1651, “to reduce all the plantations within the bay of Chesapeake to their due obedience to the parliament of the commonwealth of England ;”—which they accordingly executed in 1652 ; and whose lineal descendant in Maryland became afterwards the wealthiest subject, as it is said, in his Britannic majesty's dominions in America.

[§] Oldmixon's *Brit. Emp. in Amer.* vol. 1 p. 300.

|| One of these ministers was a Mr. *William Thompson*, a native of England, and originally among the numerous primitive Puritans of Lancashire. He was the first minister of Braintree in Massachusetts, and was now sent to Virginia, as his biographer expresses it,—“to carry the gospel to the ignorant.” *Allen's Biog. Dict. art. Thompson.*

[¶] *Beverly's Hist. of Virg.* p. 229. Oldmixon's *Brit. Emp. in Amer.* vol. 1, p. 301.

would appear, the governor and council of Virginia issued an order, that all such persons, as would not conform to the discipline of the church of England, should depart the country by a certain day.* Although this mission “to convert the ungodly Virginians,”† or, as expressed by our own annalist, “this pious design, was unhappily frustrated,”‡ and these ministers were obliged to depart from Virginia, in pursuance of the before mentioned order; yet a congregational church, it is alleged, was now founded by them in Virginia, which, in the course of a few years, exceeded one hundred members; of which Mr. *Durand* was an elder,§ whom also we shall shortly see acting as a conspicuous character in Maryland. From this church emanated that society of fanatics, who, after being driven from Virginia, and permitted to settle themselves at Providence, now called Annapolis, in Maryland, ungratefully rewarded their benefactors, by taking the reins of government out of their hands, and dispossessing the lord proprietary of his province.

CHAPT.
III.
1642.

Whether the few *Protestants*, who had been, prior to this, settled at St. Mary's with the Catholics, were those of the Church of England or Puritans, does not clearly appear. From all concomitant circumstances attending the apparently trifling occurrence, which we are now about to state, it would seem, that they were of the late established Church of England. The incident is thus mentioned on the journal of the house:—

“22d of March,—in the afternoon.—Then was a petition presented by David Wickliff in the name of the *Protestant Catholics*|| of Maryland, and respited till the next morning.

* Oldmixon's Brit. Emp. in Amer. vol. 1, p. 300. Holmes's Annals, vol. 1, p. 321.

† Chalmers's Annals, p. 121.

‡ Holmes's Annals, vol. 1, p. 321.

§ *Ibid.*, p. 346.

|| This expression is so in the record.—It is difficult to ascertain precisely, what was here meant by annexing the term—“Catholics” to that of “Protestants.”—*Leland*, in his Hist. of Ireland, (vol. III. p. 123,) mentions, that “the Irish Catholics of those days affected to consider the word *Protestant*, as a designation peculiar to the members of the established Church” of England. The Catholics of Maryland might possibly here use this term in the same sense.—As to the term “Catholic,” although it appears, according to modern usage, repugnant to that of “Protestant,” yet in its original meaning, it was by no means contradictory thereto. The Greek term—*Katholikos*—signifying total or *universal*, was first applied by the primitive Greek fathers to the whole christian church, in contradistinction to the separate and distinct christian churches set up in different parts of christendom. This term continued to be applied to the church by the Latin fathers as well as the Greek, in their writings as well as

CHAPT. "23d of March. The petition of the *Protestants* was read,
 III.
 1642. complaining against Mr. Thomas Gerard for taking away the key of the chapel, and carrying away the books* out of the chapel, and such proceedings desired against him for it, as to justice appertaineth.—Mr. Gerard being charged to make answer; the house, upon hearing of the prosecutors and his defence, found that Mr. Gerard was guilty of a misdemeanor, and that he should bring the books and key taken away to the place where he had them, and relinquish all title to them or the house, and should pay for a fine 500 lb. tobacco towards the maintenance of the first minister as should arrive."

The paragraph immediately following this on the journal seems to denote, that the members considered this as a question of considerable delicacy.—"All that had proxies expressed themselves, that they voted in their own behalfs, except John Worthing who voted for all his voices."

As Mr. Gerard must have been a man of considerable note at this time in the province, and probably a zealous Roman Catholic, being the lord or owner of St. Clement's manor, which comprehended very nearly the whole of St. Clement's hundred in St. Mary's county, this exaggerated fine upon him demonstrates, that the Protestants, supposing them to be of the Church of England only, must have possessed, at this early period of the settlement of the province, a very great influence therein, as they naturally, indeed, might be supposed to have from the su-

otherwise, but with some occasional variations in its sense and meaning; such as, that the church was *Catholic*, because, it prescribed a performance of *all* the evangelical commands, to *all* persons, of *all* conditions; and also from the *universality of grace*, which it held out to *all* men.—(See this subject learnedly explained by bishop *Pearson* in his "Exposition of the Apostles' Creed:—a work esteemed by the English divines, as a classic in the science of divinity.) In these senses the word "Catholic" was continued to be used by the *Roman Catholic Church*; and, on the event of the reformation, became, in common usage, exclusively appropriated to them. But the Church of England, continuing the use of the *Athanasian*, as well as the *Apostles'* creeds, have put in their claim also to the same title; and accordingly apply it to their church, when in the former creed they use the terms—"Catholic faith" and "Catholic religion." So in the latter creed,—when they repeat the words,—"I believe in the Holy *Catholic Church*."—This seems to be some proof, that the words,—"*Protestant Catholics*," in the journal of the house of assembly, as above mentioned, meant exclusively the Church of England—Protestants.

* This circumstance corroborates the supposition, that the "Protestants," who had presented this petition, were those of the Church of England, as the Puritans were not in the habit of using "books" in their church service. The "books," here mentioned, were, most probably, those of the Church of England service, remaining as usual, on the reading-desk of the pulpit.

premacý of the mother country. But we may here take occasion to observe, from the complexion of some proceedings of the English parliament, which had taken place prior to this period, that a very considerable number, if not a majority, of the clergymen of the Church of England in the mother country, had by this time conformed to the discipline of the Puritans. In the preceding year, (in September, 1641,) a proposition had been made in the house of commons, relative to the book of common prayer, used by the established church. "In regard," (they said,) "many things in it gave offence, at least umbrage, to tender consciences, that there might be liberty to disuse it."* Although this proposition did not at this time succeed, on account of the opposition of the house of lords, who voted an order for the due performance of divine service without any alteration, as appointed by acts of parliament, yet (as observed by *Rapin*,†) "the commons absolutely refused to join in the publication of this order, thinking it unseasonable at such a juncture to press the rigorous observance of the laws concerning divine service, *when a great part of the people called for a reformation.*" The king also, in the December following, had thought it proper to issue his proclamation to enforce the performance of divine service according to the law and statutes of the realm; but this untimely measure was deemed offensive to the commons.‡ The right of the bishops to vote in the house of lords, also had been taken away by statute; and the commons had voted, (and their votes had become laws,) that all deans, chapters, and canons should be abolished.

In conjunction with these circumstances attending the state of the church in England, an incident is mentioned in the History of Massachusetts, which seems to indicate, that notwithstanding the ruling party in the house of commons in England had failed in their attempt at a complete abolition of the established church by a statute for that purpose, as just mentioned, yet the ministers of the Puritan sects, (comprehending the Presbyterians as well as independents,) appear to have now gained an influence throughout the kingdom superior to those professing the established church.§ An assembly of divines, it

* Lord Clarendon's Hist. (folio edit.) p. 96.

† Rapin's Hist. (Tindal's edit.) vol. 9, p. 325.

‡ Rapin's Hist. *ibid.* p. 403.

§ It is remarked in the king's answer to the nineteen propositions of the parliament, both dated in June, 1642, that "conventicles had began to swarm in the

CHAPT. is said, were convened this year, (1642,) at Westminster, to
 III. consider and advise about the settling of church government.*

1642. Several lords of the upper house, and about thirty members of the house of commons, with some ministers in England who were for the independency of churches, dispatched a formal written invitation to Mr. Cotton of Boston, Mr. Hooker of Hartford, and Mr. Davenport of New Haven, (all of New England,) to ask their assistance in that synod. Two of these New England ministers thought, that "it was a clear call of God;" but the other "not liking the business, and thinking it was not a sufficient call to go a thousand leagues to confer about matters of church government," it was delayed, and the invitation finally declined.† Jealousy of the Presbyterians, who composed at this time a principal part of those denominated in England, Puritans, was most probably the true cause of the final refusal of the New England ministers to join the assembly in England.

From the preceding statement, relative to religious parties, as they existed at this time both in the mother country and the colonies, we may easily perceive, that the Roman Catholics of Maryland must have had a very difficult line of conduct to pursue. They had ample cause to dread the growing power of the Puritans; but the interests, as well as personal feelings, perhaps of the lord proprietary, would seem to have dictated his adherence to the royal cause. Those, who administered the affairs of his province, not having as yet much of the puritanic leaven mixed among them, would also feel disposed to act accordingly. Yet a mistaken policy had, it seems, suggested to the English and Irish Catholics, to pay court to the Puritans, by joining in their wishes for the destruction of the established church. In avoiding Scylla they fell upon Charybdis. On the hidden and treacherous shoals of Puritanism, their fortunes were wrecked.

Besides the few acts of assembly, passed at this session, (which will be presently mentioned,) one other measure appears

kingdom within these nineteen months."—(*Rapin's Hist.* Tindal's edit. vol. 10, p. 87.)—This computation would bring the date of the first perceptible commencement of the downfall of the church to the latter end of the year 1640.

* See this assembly of divines at Westminster characterised by lord Clarendon in his *Hist.* (folio edit.) p. 174.—"Some of them infamous in their lives and conversations; and most of them of very mean parts in learning, if not of scandalous ignorance; and of no other reputation, than of malice to the Church of England."

† Hutchinson's *Hist. of Massachusetts*, vol. 1, p. 111.—Holmes's *Annals*, vol. 1, p. 321.

on the journal; which, although it be apparently of a trifling nature, yet the mention of it serves to develope the early domestic policy, as well as the state of the useful arts, at this time, in our infant colony.—“Then was read a bill to prohibit the exportation of deer skins, to the end they might be dressed in the country, but, because the leather dresser could not undertake to take all the deer skins of the country, till he had provision of tallow, &c., out of England, it was respite till next assembly.”

CHAPT.
III.
1642.

Having finished the business of the session, the house appear to have felt an anxiety to provide against any unwillingness which the governor might possibly entertain, to convene them again within any short period. They, therefore, “appointed,” that “another assembly was to begin on the first of June next.” This was entirely consonant to their former resolution, on the first day of the session,—that the adjournment or prorogation of the house should not be without their own consent. They do not appear, however, to have entirely taken away the right of the governor to *dissolve* the house; for, the last entry on the journal of this session is,—“Then the lieutenant general dissolved the house.”—But it is to be supposed, that this exercise of the power of dissolution by the governor, was also, as well as that of prorogation, not to be “without the consent of the house.”*

Three acts of assembly only were passed during this short session. The first, which was entitled, “an act for the putting in force of some laws for the government of the province,” related to some branches of the act of 1638, ch. 2, before mentioned; to wit, so much of that act as concerned the rights of the lord proprietary, and people’s liberties,—the power of judicature in civil and criminal causes,—the captain of the military band,—officers’ fees,—the settling the house of assembly,†—the payment of debts among all creditors by equal

The acts
passed at
this ses-
sion.

* For all proceedings of this session of assembly, as above mentioned, see the record book, in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 166.

† By the 14th section of the act referred to, (1633, ch. 2.)—“The lieutenant general and secretary, (or his deputy,) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the freemen,) at any time hereafter assembled, shall be judged a general assembly.” So that by the present recognition of this clause in the former act, it would appear, that the next assembly was not to consist, as at the present one, of a convention of *all* the freemen of the province, but according to the constitution as before settled and adopted at the two sessions preceding this last one.

CHAPT. partitions,—and the custom of tobacco. These branches, of
 III. that act of 1638, were hereby revived and continued until the
 1642. end of the next assembly.*

The next act of this session was entitled, “an act for granting one subsidy.” The motives to this act are thus set forth in the preamble.—“The freemen of this province out of their desire to return his lordship some testimony of their gratitude for his lordship’s great charge and solicitude in maintaining the government, and protecting the inhabitants in their persons, rights, and liberties, and to contribute some support towards it, so far as the young and poor estate of the colony will yet bear, do desire that it may be enacted, &c.” The subsidy granted was 15 *lb.* of tobacco per poll, for every inhabitant of the province, male and female, children under the age of twelve years excepted, to be paid according to the lists or returns made by the several housekeepers, between the 25th of July and 25th of August next, under the penalty of 30 *lb.* of tobacco for every taxable concealed. The expenditures of lord Baltimore, in the settlement of his province, from its first colonization to the present period, must have been very considerable, and for which he could not, in the nature of things, have as yet received from the colony any thing like a remuneration. The colonists were, therefore, most probably actuated, in granting this subsidy to the lord proprietary, by a mere honest sense of justice.†

The other act of this session, entitled, “an act against fugitives,” was only a re-enactment of an act, with the same title and the same words, passed at the last session, and herein before noticed. This mode of legislating appears to have been much in use in the early sessions of the provincial legislature. Instead of reviving or continuing a former act, it was common to re-enact the same over again with the same title and in the

* It is mentioned in this act of 1641–2, ch. 4, that “the next assembly was to begin on the 12th of November ensuing, unless some assembly should be called sooner.”—But as just stated above, it had been “appointed, that another assembly was to begin on the first of June next.”—These contradictions indicate the perturbed and unsettled state of the government of the province at this time.

† *Chalmers*, in his annals, (ch. IX. p. 208,) makes the following remarks upon this act of assembly.—“The transportation of people and necessary stores and provisions, during the two first years, cost lord Baltimore upwards of forty thousand pounds; which, if estimated according to the then value of money, and the price of all things, must be allowed to have been a considerable sum. The freemen of the province thought so, when they granted him this subsidy. And this donation does equal honour to both, because it shews that the one had merited; that the others were grateful.”

same words; a practice, that tended unnecessarily to swell the statute book.

CHAPT.
III.

About this time must have arrived in the province the new "conditions of plantation," bearing date the tenth day of November, 1641, which his lordship had thought proper to be promulgated by him, at London, for the better encouragement of emigrants to his province. They seem to pursue his original system of colonizing the province by dividing it into manors; and it is probable, from the special direction therein, that emigrants to the province should go out furnished with "such arms and ammunition" as are therein specified, that information of the hostilities of the Indians had reached him before he issued those "conditions."*

1642.
New con-
ditions of
plantation.

Early in the spring of this year must have occurred the proceedings of some of the Maryland colonists, as recognized by the historians of New York, in taking possession of the margin of the river, then called by the English—Hiding-creek, but by the Dutch—Schuylkill. These proceedings of the Marylanders must have been founded on a supposition, that the expression in lord Baltimore's charter,—“unto that part of the *bay* of Delaware on the north, which lieth *under the fortieth degree* of north latitude from the equinoctial, where New England is terminated,” extended the north bounds of his province, so as to include the whole of the fortieth degree.† By which means all the lands on both sides of the Schuylkill, including the city of Philadelphia and the peninsula or neck of land lying between the rivers Delaware and Schuylkill and south of Philadelphia, would have been a part of the province of Maryland. But as the “bay” or *estuary* of Delaware did not extend higher up that river than New Castle, this subsequently became a doubtful question, and formed part of the grounds of dispute between the proprietaries of Maryland and Pennsylvania, which afterwards so long subsisted. Notwithstanding the lord Baltimore's grant, and notwithstanding also the Swedes had, in the year 1627, arrived in the Delaware, and carried on for some years traffic with the natives, and had, in 1631, built a fort at the mouth of Christina creek, near Wilmington, William Kieft, who appears to have been the third Dutch governor at New Amsterdam, (now New York,) and had acceded thereto in the year 1638, claimed all the country from thence “to Delaware, then called South river,

Maryland
settle-
ments on
the
Schuylkill.

* See note (LXIII.) at the end of this volume.

† See note (XLIV.) at the end of this volume.

CHAPT. and beyond it," to the exterior south cape of Delaware bay,
 III. called Cape Henlopen, at Fenwick's island, as a part of New
 1642. Netherlands. He accordingly, in a letter,† dated May 6th, 1638,
 directed to Peter Minuit, (or Minnewits,) whom the historian of
 New York supposes "to be the Swedish governor of New Swe-
 den," asserted, "that the whole South river of New Netherlands,"
 (the Delaware,) "had been in the Dutch possession many years,
 above and below, beset with forts, and sealed with their blood."
 In pursuance of this right by "possession," which the Dutch
 had thus acquired by "their blood," as they alleged, to the
 lands even on the *west* side of the Delaware, this same governor
 of New Amsterdam, (Kieft,) being informed of these proceed-
 ings of the Marylanders, in May 1642, "fitted out two sloops,"
 (an armament to go round from New York to the Schuylkill, by
 sea, as we may suppose,) "to drive the English, (Marylanders,)
 out of Schuylkill." In his instructions, dated May 22d, to
 Ian Iansen Alpendam, who commanded in that enterprise, he
 again strongly asserts the right of the Dutch both to the soil and
 trade there.* But, allowing that the English claim to all the
 country lying between the colonies of Virginia and New Eng-
 land, to have been valid, by reason of Cabot's discovery, the
 lord Baltimore and his Marylanders were obviously justifiable in
 considering even the prior possessions, (if they were really so,)
 of either the Dutch or Swedes, as entitled to no consideration,
 at least by any British subject, against the right granted to him
 by his charter of Maryland from the English crown. Whether
 Alpendam succeeded in his enterprise, or whether the Maryland-
 ers then relinquished their possessions on the Schuylkill, we are
 not informed, nor do our Maryland records make any mention of
 this attempt by the inhabitants of Maryland to form at this time
 any settlements on the Schuylkill.

Besides the intrusions of these foreigners,—the Dutch and
 Swedes, into the territories of Maryland, claims were now made
 also to lands on the west side of the Delaware by some English
 settlers at New Haven. In some proceedings of the commissioners
 for "The United Colonies of New England," convened at Bos-
 ton, the 19th of April, 1653, relative to disputes between them
 and the Dutch, they thus express the principle on which they
 laid claim to "lands on both sides Delaware bay and river."

† See note (XLV.) at the end of this volume.

“The United English colonies* expecting a just and neighbourly correspondence and intercourse from and with the Dutch living at and about the Monhatoes, which they call New Netherlands, (though the place fall within that part or tract of America called New England, lying and being in breadth *from forty to forty-eight degrees* of northerly latitude, which both in Europe and here is well known by *antient patent* to be granted by the kings of England to their subjects, to settle and plant upon,) have met with a constant course of opposition, injuries, and many hostile affronts.”†

CHAPT.
III.
1642.

The “antient patent,” here mentioned, could be no other than that, which was commonly called Sir Ferdinando Gorges’s grant, bearing date, November 3d, 1620. This grant was made to the duke of Lenox, and several others of the nobility, together with Sir Ferdinando Gorges; and seems to have been intended as a substitute for the old North Virginia company, who had ceased at this time to act. By this patent, “all that circuit, continent, precincts, and limits in America, lying and being in breadth from forty to forty-eight degrees of northerly latitude, and in length by all the breadth aforesaid throughout the main land from sea to sea,” &c., was given to them in absolute property.‡ But these letters patent, after receiving severe animadversions made upon them in the house of commons, on account of real or supposed restrictions contained in them on the right of free fishery in America,§ were, on the 7th of June, 1635, surrendered to the king, and became void.|| Besides, agreeably to the words of this patent, New England could have commenced only where the *fortieth* degree of latitude terminated; the words—“*from the fortieth degree*,” &c. being exclusive. The line of the fortieth degree of latitude crosses the Delaware a little above Philadelphia. A great portion of the river and the whole of the bay were, therefore, clearly out of the limits of this

* Articles of union between the four colonies of Massachusetts, Plymouth, Connecticut, and New Haven, were drawn up in the year 1638, but difficulties occurred, which retarded the execution of the design, until the year 1643, when commissioners, appointed by those colonies, completed and signed the articles of union at Boston, on the 19th of May in that year. See Holmes’s Annals, vol. 1, p. 326.

† Hazard’s Collections, vol. 2, p. 212.

‡ See these letters-patent in Hazard’s Collections, vol. 1, p. 103.

§ See these debates on this subject in the Introduction to this volume, p. 235 to 239, and p. 243 to 245.

|| See the deed of surrender in Hazard’s Collections, vol. 1, p. 393.

CHAPT. grant. It becomes difficult then to discern any plausible pre-
 III. tence, on which the settlers of New Haven could ground a right
 1642. to any lands on the Delaware by force of these letters patent,
 which had been thus surrendered and made void, prior to any
 voyage or adventure of any of their fellow-settlers, to the Dela-
 ware, and which moreover did not comprehend within its limits
 any of the contested settlements of the Dutch or Swedes on the
 Delaware, or even the Marylanders on the Schuylkill.

Aware, perhaps, of the futility of a right thus founded, the
 commissioners, in another part of their proceedings, seem to
 place the foundation of their right on another ground, not indeed
 much more solid than the former,—*a purchase from the natives*.
 As this part of their proceedings contains a short sketch of the
 history of their claim to the present period, it is here inserted.—
 “In the yeare 1640, the English att Newhauen sent men to view
 and purchase parte of Delaware bay but with expresse direction
 not to meddle with any thing the Dutch or Swedes had right
 unto. As the English vessel passed by the Monhatoes the said
 Monser Keift made a protest but upon enformacon of the order
 giuen hee was satisfyed and wrot to Iohn Jonson the Duch agent
 att Dellawar to hold good corespondency with the English there
 which accordingly hee did att first and shewed them how fare
 the Duch and Sweds title or claime reached; the rest hee told
 them was free for them to purchase and offered his assistance
 therin which offer (though kind accepted,) was not entertained;
 but the Indians being free the English agents att seuerall times
 from the seuerall propriators purchased large tracts of land on
 both sides Delaware bay and riuier and began to plant and to sett
 vp houses for trade within their own limits; but in anno 1642
 without cause or warning giuen without shewing any title to
 the place or hearing what the English could say for †
 the said Duch gouernor sent armed vessells and men and in hos-
 tile mannor when they were altogether vnprepared for defence,
 as expecting nothing but peace seized their goods carried away
 the men prisoners and with such violent hast burnt downe their
 trading houses that two houres respite for treaty or consideration
 could not bee obtained, nor soe much time as to inventory the
 goods taken out of their charge; and after in another parte of
 the riuier they seized their boat and two other men in it carry-
 ing the men and goods first to the Monhatoes and thence return-

* This blank is so in the original.

ing the persons and parte of the goods to Newhauen; as by letters and other euidence may appear. Mr. Lamberton agent for the English att Newhauen coming from Delaware anno 1642 by the Monhatoes, the Duch gouvernor aforesaid compelled him by threatenings and force to giue an account of what beauer hee had traded within the English limits att Delaware, and to pay recognition or costom for the same and a protest sent from Newhauen against those injurius proceedings proued altogether fruitless. The Duch gouvernor aforesaid sent armed vessels to Delaware to seize Mr. Lamberton's vessell by force or to driue him out of the riuer but hee perceiuing their aime stood upon his guard and at that time maintained the right and honnor of the English."*

As ten years had now elapsed since the lord Baltimore had obtained his grant, and his colony had been settled at St. Mary's for several years in pursuance thereof, we cannot but deem it extraordinary, that, amidst these disputes between the Dutch and the New Haven colony, no notice appears to have been taken of his lordship's claim. That the Dutch should pay but little attention to it, may indeed be easily accounted for. They naturally deemed their claim, founded as they alleged on the right derived from *prior occupancy*, paramount to any grant from the British crown. It must be allowed, indeed, as has been before observed in the introduction to this history,† that the right of *prior discovery*, (under which by Cabot's voyage the English claimed all the continent from the coast of Labrador to the cape of Florida,) is generally but a slender right, unless quickly followed by an *occupancy* coextensive with the claim. The *limits* also of the territory thus supposed to be acquired by occupancy have always been fruitful of uncertainty and dispute. Hence the Dutch had some plausible pretext for building a claim to their settlement at Manhatoes and the territories which they denominated New Netherlands, as far as the east side of the Delaware, as they consisted of the unoccupied space of the continent between the colonies of Virginia and New England. But, however just these pretensions of the Dutch might have been, certainly no English subject could with propriety presume to claim lands, under a purchase from the natives, which his sovereign, (in whom alone the right of grant vested,) had before granted to another subject.

* See the proceedings of the New England commissioners, in Hazard's Collections, vol. ii. p. 212-13-14.

† See note (C.) at the end of the former volume.

CHAPT. III. The New Haven colonists were, therefore, violating a well established principle, acknowledged throughout the colonization of British America, and adopted or retained to this day by the United States. But lord Baltimore and his colonists were papists, unentitled, in the eyes of these Puritans, to any rights. Their claims were therefore disregarded by them. These considerations, together with the distance between St. Mary's, the place of the first settlement of the Maryland colony, and the remote limits of the province on the shores of the Delaware, sufficiently account for the intrusions of the New Haven colonists, and the passive conduct of the Marylanders in permitting those of the Dutch and Swedes, on that part of their territories.

Attempt
in England
to revive
the old
charters of
Virginia.

It would be improper to pass over in this place unnoticed some proceedings of the assembly of Virginia, held in this year, which, at least in the tendency of their consequences, had material relation to the colony of Maryland. Shortly after the commencement of the session of parliament called and held in the year 1640,* commonly called the long parliament, which soon manifested the ascendancy they had now gained and exercised over the power and prerogative of the crown, this acquired influence of the popular branch of the English constitution suggested to some of the old proprietors of Virginia under their abolished charter, that a favorable occasion now presented itself for the revival of the judgment of *quo warranto* in the year 1624, whereby these charters had been annulled. If an act of parliament could be procured, which should vacate or set aside that judgment of the court of king's bench, all the rights of the members of the old corporation under those charters would revive, and the colony of Virginia become again proprietary, and subject to the government of the corporation in England. All subsequent grants of lands within the territories of that ancient dominion, and particularly the charter of Maryland to lord Baltimore, would then become void, and, what perhaps was of more importance in the view of the first instigators of this transaction, the well known loyalty and adherence of the lordly possessors of Virginia to the royal cause might be suppressed, and the "growth of popery"—that noxious weed, be cut and rooted up out of Maryland. These previous facts are, however, best stated in the words of "the declaration" of the assembly of Virginia.

"To all christian people to whom these presents shall come

* Chalmers's Annals, p. 215.

to be read, heard, or understood, we, the governor, council and burgesses of the grand assembly in Virginia, send greeting in our Lord God everlasting:—Whereas George Sandys, esqr. being appointed agent for the colony by the assembly 1636,* hath exhibited a petition in the name of the adventurers and planters in Virginia, to the honourable house of commons in parliament in England, for restoring the letters patent of incorporation to the late treasurer and company, mistaking his advice and instructions from the said assembly for his so doing, it being neither the meaning nor intent of the said assembly or inhabitants here, for to give way for the introducing of the said company or any other.

“To which intent and purpose, this grand assembly having fully debated and maturely considered the reasons on both sides, as well arguing for as against a company, and looking back to the times under the company, as also upon the present state of the colony, under his majesty’s government, they find the late company in their government intolerable, the present comparatively happy, and that the old corporation cannot with any possibility be again introduced, without absolute ruin and dissolution of the colony, for these reasons following, viz:”—A variety of reasons are then forcibly urged at considerable length, the principal of which appears to be—an apprehension, that the corporation would again assume to themselves a monopoly of their trade, and also usurp a right of legislation over them, when they had a legislature of their own, granted to them by the indulgence of his majesty; and moreover, that the planters now enjoying their lands under grants of his majesty, “the wiser world” (they said,) “we hope will excuse us, if we be weary to depart with what (next our lives,) nearest concern us, which are our estates, being the livelihood of ourselves, wives, and children, to the courtesy and will of such task-masters, from whom we have already experienced so much oppression.” The declaration concluded in the form of an act, in which is prescribed a severe penalty, (to wit, the forfeiture of their estates in the colony,) on “any planter or adventurer, who should go about by any way or means either directly or indirectly, to sue for, advise, assist, abet, countenance or contrive the reduction of this colony, to a com-

* “George Sandys, gentleman,” is in the list of the members of the corporation, whose names are inserted in “the second charter of Virginia” of 1609.—The gentleman above mentioned being, probably, the same person, his interest therein might have influenced his conduct.

CHAPT. pany or corporation, or introducing a contract or monopoly upon
 III. our persons, lands or commodities.”*
 1642.

This declaration, accompanied with a petition for the royal confirmation of it, was transmitted to his majesty, who, having now come to a final rupture with his parliament, had on the fifteenth of March preceding fixed his residence at the city of York. Well pleased with the loyalty of his faithful colony, his majesty quickly returned an answer, of which the following is the most material part.

“These are to signify, that your acknowledgment of our grace, bounty, and favour towards you, and your so earnest desire to continue under our immediate protection, is very agreeable unto us; and that as we had not before the least intention to consent to the introduction of any company over that our colony, so we are by it much confirmed in our resolutions, as thinking it unfit to change a form of government wherein (besides many other reasons given, and to be given,) our subjects there having had so long experience of it, receive so much contentment and satisfaction. And this our approbation of your declaration and protestation, we have thought fit to transmit to you under our royal signet. Given at our court at York, the 5th of July, 1642.”†—Thus a blow, which would have been more effectually destructive of the rights of lord Baltimore and his colonists than even those of the planters of Virginia, was happily warded off by the spirit and resentment of the latter. That these endeavours to re-establish the old corporation of Virginia were undertaken partly with a view to the abolition of the Maryland charter, receives considerable confirmation from “an elaborate memorial, which” (it is said,) “was written in those days, entitled, a declaration shewing the illegality and unlawfulness of the patent of Maryland.”‡

War with
the Indi-
ans.

The Indians of Maryland still continuing their hostilities, probably with increased violence, it was deemed necessary to introduce a more strict military discipline among the colonists, than they had heretofore practised. The following “orders” were

* This declaration is dated “the first of April, in the year of our Lord 1642, and in the eighteenth year of the reign of our sovereign lord king Charles over England,” &c.—See it at large in *Burk's Hist. of Virg.* vol. ii. p. 68.

† See *Burk's Hist. of Virg. Ibid*; and *Chalmers's Annals*, p. 121, and 133; who cites *Virg. Entr.* vol. 1, p. 237.

‡ *Chalmers's Annals*, pp. 215, 236; for which he cites *Virg. Papers*, 75 B. p. 135.

therefore "proclaimed on the 23d of June, 1642, upon pain of death or other penalties as by severity of martial law may be inflicted.

CHAPT.
III.
1642.

"That no inhabitant or housekeeper entertain any Indian upon any colour of license, nor do permit to any Indian any gun, powder and shot.

"That all housekeepers provide fixed guns and sufficient powder and shot for each person able to bear arms.

"No man to discharge three guns within the space of one quarter of an hour, nor concur to the discharging so many, except to give or answer alarm.

"Upon the hearing of an alarm every housekeeper to answer it, and continue it so far as he may.

"No man able to bear arms to go to church or chapel or any considerable distance from home without fixed gun, and a charge at least of powder and shot.

"Of these every one required to take notice upon pain of contempt; for better execution the serjeant to inform the lieutenant general or captain."

With these "orders," and on the same day, commissions of captaincies were issued to two several gentlemen:—to William Blount, esq., to be a "captain of the soldiers of St. Mary's county;" and to Robert Evelyn, gent., "to take the charge and command of all or any the English in or near about *Piscattaway*, and to levy, train, and muster them," &c. In a week or two afterwards also, (July 11th,) written orders or commission issued to Mr. Rigby,—“to repair to the great men of Patuxent and of the nations adjoined to them, and of them to demand in my name,” (the lieutenant general,) “to deliver without delay unto Simon Demibiel or Henry Bishop, or any other the bearer or bearers hereof, the persons of such Indians of any of those nations, as shall be named to you by the said Simon or Henry to have done unto them and other English, injury in their swine and otherwise, to the end the said Simon or Henry may bring the said Indians before me to answer such complaints as shall be objected against them by the said Simon or Henry or any others, and certify me what you have done herein, as soon as you may, and this shall be your warrant.”*

From these proceedings at this time relative to the Indians,

* For these military orders and commissions, see "Council Proceedings from 1636 to 1657," pp. 59, 61.

CHAPT. we seem authorised to suppose, that our colonists had now ex-
 III. tended a scattered population as high up the Patowmack as Pis-
 1642. cattaway creek, so as to include in peaceable possession that
 portion of the peninsula lying between the rivers Patowmack and
 Patuxent, which now constitutes the counties of St. Mary's and
 Charles ; although some tribes of Indians might perhaps have
 still remained precisely within these limits, over whom the Mary-
 land government might have exercised some civil jurisdiction.
 It will be recollected, that on their first settlement at what was
 called the city of St. Mary's, the Yoamacoes, for reasons before
 mentioned, particularly on account of the hostilities practised
 towards them by the Susquehanocks, were about receding far-
 ther into the country ; and the particular scites of towns of the
 next adjacent tribes were at Piscattaway, where Mr. Fleete had
 resided with them some time, and at another place somewhere
 on the right or south bank of the Patuxent, whose king visited
 the colonists on their first landing in a friendly manner, as be-
 fore related. Our records do not make mention, during these
 times, of any other nation or tribe, inhabiting what is commonly
 called the western shore of Maryland, with whom our colonists
 were engaged in any warfare, than the Susquehanocks and the
 Wycomeses.* The plundering of live stock by the Indians of
 Patuxent does not seem necessarily to imply, that they were in a
 state of war with the colonists. Savages, in all cases, pay but
 a feeble respect to the rights of property.

Another
 session of
 assembly
 this year.

Although at the conclusion of the last session of assembly,
 which ended on the 23d of March last, the house "appointed,"
 that "another assembly was to begin on the first of June next,"
 yet no further notice thereof appears on our records until the
 first of July following, when a proclamation appears to have been

* The Susquehanocks, Wycomeses, and Nanticokes were, by the governor's proclamation of the 13th of September of this year, declared to be "enemies of this province," as will be seen in a few pages further on. The sites of the Nanticokes and the Susquehanocks are well known at this day to have been on the rivers of their respective names ; but insuperable difficulty occurs in ascertaining the true location of the *Wycomeses*. In a pamphlet published in 1648, entitled, "a description of the province of New Albion, in North America," as stated in the notes of *Smith's Hist. of New Jersey*, (p. 31,) the "Wycomeses," together with "the Ihon-a-Does" (meaning most probably the *Oneydas*, one of the Iroquois tribes,) were the "forced auxiliaries" of the Susquehanocks. But whether these Wycomeses inhabited any part of the western shore of Maryland, or on the western side of the Susquehanah in Pennsylvania, we have no authority to determine.—See *Proud's Hist. of Pennsylv.* vol. 1, p. 114, and *Holmes's Annals*, vol. 1, p. 347.

issued by the lieutenant general "appointing a general assembly to be held on Monday the 18th of July, 1642, and requiring the freemen of every hundred to elect burgesses for that purpose;" and also "personal writs" of the same date were issued to divers gentlemen therein named to attend the assembly.

CHAPT.
III.
1642.

It will be recollected, that by the first act passed at the last session, to wit, that entitled, "an act for the putting in force of some laws for the government of the province," certain branches of the act of 1638, ch. 2, before mentioned, were revised and continued until the end of the next assembly, particularly that part of it which related to "the settling the house of assembly;" whereby "The lieutenant general and secretary, (or his deputy,) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the freemen,) at any time hereafter assembled, should be judged a general assembly." This first act of the last session, therefore, restored the representative principle of the provincial constitution, and abolished the democratic principle, (or that of a pure democracy,) as exercised at the last session, wherein every freeman in the province had claimed, or was entitled to a seat in the legislature, either by his individual presence or by that of his proxy.*

Accordingly, the first business, which appears to have occupied the attention of the house, on the first day of the session, (18th of July,) had relation to this subject.—"Richard Thompson and Robert Vaughan exhibited themselves proxies for the several freemen of Kent,† who elected them as such, and shewed their names; but they were refused to be admitted as such, in regard the act had appointed *burgesses*, and the writ had commanded the election of *burgesses*. Then they pleaded, that the freemen had likewise elected them *burgesses*, and desired as such to be admitted. Whereupon Mr. Giles Brent's‡ letter was looked into, and there found a certificate of their election as *burgesses*; whereupon they were admitted as such."—From this it appears, that in the opinion of this assembly, there was an essential difference between the words *proxies* and *burgesses*;

Proceed-
ings there-
in.

* See the proclamation for calling that assembly, before p. 190.

† The isle of Kent.

‡ Mr. Giles Brent must have been, from this, a resident in the isle of Kent, at this time, and in some official capacity there. He had been *commander* of the isle of Kent, (see before, p. 166;) but in this office, it seems, he was shortly afterwards succeeded by Mr. Braithwayte, (see before, p. 170.) He must, however, have given the above mentioned certificate, by virtue of some public powers then vested in him.

CHAPT. the former being a representative of an individual; the latter, of
 III. the people in an aggregate capacity.

1642.

In the afternoon of this first day of this session, a more important motion was made in the house. One, which laid a foundation for the adoption in Maryland of that great constitutional principle of "checks and balances," which, next to that of representation, is said to form peculiar features of excellence in the English and American constitutions. "Robert Vaughan" (one of the before mentioned burgesses of Kent,) "in the name of the rest,* desired that the house might be separated, and the burgesses to be by themselves, and to have a negative; but it was not granted by the lieutenant general; "that is, it was not agreed to by the lieutenant general, without whose assent, he being the lord proprietary's lieutenant or deputy, so important a change in the form of the provincial government could not with propriety take place.

This conduct of the governor must be viewed, at least at this day, as one of those instances, wherein the rulers of a government are often too tenacious of their power; an impolicy, which often thwarts its own purposes. To yield it up with grace and at least apparent willingness, on such occasions, especially when good principles of government and the happiness of the people require it, would often be the surest means of preserving the remnant of power, which it would be their duty to retain. When we attend to the state of this house of assembly, we easily see through the policy, which actuated the governor at this time. From the journal there appears to have been nine gentlemen in the house, (besides the lieutenant general and the secretary, the former of whom acted as president,) who were "called by special writs" to attend, and who with the president and secretary made up eleven in number; and nine gentlemen, whose names appear as burgesses elected for the several hundreds, to wit, two for each hundred, inclusive of the isle of Kent as one hundred, except for St. Clement's hundred, for which only one appeared, and one was elected for Mattapanient hundred, who did not appear at the first of the session. The governor was, therefore, sure of a majority, even after the number for Mattapanient hundred appeared, by means of his own casting vote. It is to this cause only, that we can attribute the refusal of the governor to

* That is, "the rest" of the *burgesses of the house*, in contradistinction from those summoned by *special writ*.

assent to this salutary alteration of the provincial form of government as it then existed.

CHAPT.
III.
1642.

Another incident occurred in this afternoon's session, which, having relation to the lieutenant general's powers in the government, also requires to be noticed.—“Upon motion made of a march against the” [Indians*] “they” to wit, (the burgesses,) “expressing a great opposition, the lieutenant general told the burgesses, he did not intend to advise with them, whether there should be a march or not, for, that judgment belonged solely to himself, as appeared by the clause of the patent touching the power of war and peace;† but to see what assistance they would contribute to it, in case he should think fit to go; and a motion was made by the secretary, that a bill might be drawn up for the levying of 20 lb. tobacco per head toward the charge of it, whereto the burgesses desired to have the patent to peruse, and respite till the next morning to advise of their answer.”—What was the cause of the “great opposition expressed by the burgesses” to this “march against the Indians” is not explained; and, as a war now subsisted against them, it is difficult to form any conjecture concerning it. The clause in the charter, together with the analogy between the constitutional laws of England and those of the province, seem to justify the governor in his claim to the power of *arraying* and mustering the inhabitants of the province and to wage war. It is not impossible, however, but that the dispute between the king and parliament in England before alluded to‡ about the right of commanding the *militia* and commissioning the officers thereof, had dictated a disposition in our colonists to deny the like right to the governor of Maryland.—It must be acknowledged, that if this prerogative of mustering and *arraying* the militia did not appertain of right to the king, he could not by his grant have conveyed it to the lord proprietary. King Charles the first had, at the commencement of the civil war, while he was at York, (in June, 1642,) issued out a *commission of array* “for the better ordering and governing of the militia,” and at the same time

* There is a blank here in the record; but from the whole of the paragraph it evidently appears, that either the word *Indians*, or some particular *denomination* of Indians, was in the *original* record book, of which that now remaining in the council chamber, from which the above extracts were taken, was only a transcript.

† See the *twelfth* section of the charter, in the former part of this volume.

‡ See p. 197.

CHAPT. III. issued orders to the several counties, "expressly forbidding any obedience to be given to the *ordinance* for the militia passed by both houses." This *commission of array* was not thought legal, even by some of the friends of the king, who still retained their seats in the house of commons, particularly by the learned Mr. Selden.* And Mr. Justice Blackstone seems to acknowledge, that the king's power over the militia was *then* "unsupported by any statute and founded only upon immemorial usage."† He further observes,—“This question, long agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the king and his parliament: the two houses not only denying this prerogative of the crown, the legality of which right perhaps might be somewhat doubtful, but also seizing into their own hands the entire power of the militia, the illegality of which step could never be any doubt at all.”—We are authorized from this, it seems, to conclude, that although the lieutenant general might have had no power to order out the militia of the province, the house of assembly had none. A law for the purpose ought then to have been the issue of the dispute.

The bill proposed by the secretary, “for levying 20 lb. of tobacco per head,” did not pass at this session, and no further notice of it appears in the journal.—An act, entitled, “an act for the support of the government,” was passed, whereby “five per cent. on all tobaccoes exported, except to England, Ireland or Virginia, as the last port,” was granted. This, however, appears to be only a re-enactment of the thirty-sixth bill of the session of 1638–9, together with the thirteenth clause in the act of 1638, ch. 2, all to the same purpose and in the same words; which bill and clause were among those revived and continued at the last session by the act of 1641, ch. 4, entitled, “an act for putting in force of some laws for the government of the province.” So that the re-enacting this act, “for the support of the government,” now at this session, was only an exercise of the mode of legislating commonly practised at the earlier sessions of our provincial legislature, as before mentioned, instead of reviving or continuing a former act; and formed no new provision for the support of the government. It seems difficult, however, to suppose, that the *exports* of tobacco from Maryland to other

* Lord Clarendon's Hist. (folio edit.) p. 218.—See also Rapin's Hist. of Eng. (Tindal's edit.) vol. 10, p. 315.

† 1 Bl. Com. 411.

countries than "to England, Ireland, or Virginia," could amount to such a quantity, as to be an object of legislative consideration; but such it must have been, else these successive acts of the legislature to the same purpose, would not have been passed. CHAPT. III. 1642.

On the next day of the session, (July 19th,) a very important proceeding of the house, relative to the constitution or form of government of the province, took place; and appears to have been intended as a permanent confirmation of the representative principle of the government, as now adopted at this session, instead of the more democratic form, as practised at the last session, when every freeman of the province claimed a seat in the legislature. It appeared first in the form of an "order of the house," among other rules and orders for the better regulation of their session, which, on account of the importance of the first, and gratification of curiosity in the others; are here inserted at large.

"1. Any ten members of the house, at any time assembled, at the usual or appointed time, (whereof the lieutenant general and six burgesses to be seven,) shall be a house, unless sickness do hinder that number: in which case only the members present to make the house.

"2. Any one of the house not appearing upon call after the third beating of the drum, shall forfeit 100 lb. tobacco, unless he have leave of the lieutenant general for absence.

"3. The drum to beat as near as may be to sun-rising, and half an hour's distance between such beating.

"4. No bill to be read above once in one day.

"5. None to speak in one day above once to one bill without leave of the lieutenant general, upon pain of 20 lb. tobacco. If two or more rise together, the lieutenant general shall determine, who shall speak first.

"6. None to use any indecent, taunting, or reviling words, to the naming or personating of any member in the house, or any other way misbehave himself in his speech upon pain of such censure as the house shall think fit."

Immediately succeeding these orders, there appears on the journal, the following paragraph.—"Upon the motion of the secretary, intimating the necessity to pass the first of these orders by way of bill, in regard of an act in force, the first order was read by itself as a bill and passed by all the freemen. Then the lieutenant general enacted it, in his lordship's name, for a law."

CHAPT. On the following day, to wit, the 20th of July, it was again
 III.
 1642. read, and two clauses were added; first, the repeal of all former acts touching the house of assembly; and, secondly, the limiting of this act to endure till the end of the next assembly: which being accepted, it was accordingly that same day published under the great seal.

A chasm afterwards appears in the proceedings of the house, probably on account of an adjournment, until the 30th of July, when a petition of Henry Bishop was read,—“touching a remedy against the Indians of Patuxent, for killing his swine; and answered, that he is required to prove his petition, and then he shall have remedy.”—From this it would seem, that the mission, before mentioned,* of Mr. Rigby “to the great men of Patuxent, and of the nations adjoined to them,” failed in its intended effect; and that satisfactory proof of the alleged injury was necessary in such cases, before the government would undertake to indemnify the sufferer.

On the first of August, which appears to have been the last day of the session, some proceedings, worthy of notice, arose on passing the act entitled, “an act determining what shall be adjudged a lawful tender.”—From the tenor of this act it would appear, that it was not made to make tobacco a legal tender; for, that, we may presume, had been done by some former law, possibly by that passed at the session of 1637–8, entitled, “a bill for ordering the payment of tobacco;” but it seems to have been intended to direct the *mode* of tendering tobacco.† This act passed by a majority of only one or two, for, *eight* members were in the negative, and the house consisted of only eighteen or nineteen members. This close voting gave rise to a constitutional question in the house, stated as follows:—

“Then Mr. Greene excepted against the voting of this bill; that it was not by the major part of burgesses, as it ought to be. Whereupon the act, made in the beginning of this assembly, was read, and it was found, that the company present was a house, and in this house every one present, whether by personal writ or as a burgess, had a voice, and that the major part of such voices present and such as they were to be proxies for, was to be judged to be the vote of the house.”

This entry on the journal is rather obscure, and not sufficiently explanatory of the *grounds* of Mr. Greene’s objection. We may,

* See before, p. 213.

† See this ancient tender law, in note (XLVI.) at the end of this volume.

however, infer, that, as the act above referred to, "made in the beginning of this assembly," required *six burgesses* to be present, to constitute a house, it is possible, that Mr. Greene might have supposed, that the assent of *six burgesses* was necessary for the passage of a law, as well as to constitute a house. But it would seem, that the act was sufficiently satisfied, if there were *six burgesses* present, although some of them should vote in the affirmative and some in the negative. It is difficult, however, to reconcile the privilege above mentioned, of appointing proxies in the house, with the representative principle of the legislature, as now settled, unless the privilege of appointing proxies, as above, be supposed to refer only to those gentlemen, who were summoned by "personal writs," and who sat in the house in their own right, and could therefore legally constitute a proxy.*

CHAPT.
III.
1642.

Several other important acts were passed at this session. In the act entitled, "An act for judges," is the following clause:—"In cases not limited in the rule or sentence by any certain law of the province, judgment shall be by the lieutenant general and council of the province then present in court, or the major part, (if it be in the *provincial* court,)—or by the lieutenant general or commander, or commissioners of the county then present, (if it be in the *county* court,)—and if the votes be equal, *that* sentence shall be entered, which is given by the chief judge."

The purport of this act appears to have been to vest a discretionary power in the judges of the two courts therein mentioned, in cases where the judgment of the court was not particularly prescribed by some act of assembly; but it more particularly deserves notice on account of its being the first legal recognition, now appearing on the records, of the supreme court of the province under the denomination of the "provincial court;" which, indeed had existed ever since the first settlement of the province, or at least since the year 1637, under the "ordinance" or commission of the 15th of April of that year.†

The next act of this session, immediately following the last mentioned, was that entitled, "An act for the rule of judicature;" intended, as it appears, to chalk out, as it were, the outlines of a system of jurisprudence, for the better guidance of the judges of the courts of the province. By this act, "first, right and just, in all civil causes, were to be determined according to the law, or

* For the proceeding of this session, see the record book, in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 186—189.

† See before p. 41 42, and 86.

CHAPT. most general usage of the province since its plantation, or former precedents of the same or the like nature. Secondly—In
 III.
 1642. defect of such law, usage, or precedent, then according to equity and good conscience; not neglecting, (so far as the judges shall be informed thereof, and shall find no inconvenience in the application to this province,) the rules by which right and just useth and ought to be determined in *England*, in the same or the like cases. Thirdly—All crimes and offences to be judged according to the law of the province; or, in defect of certain law, according to the judge's best discretion, judging as near as conveniently may be to the laudable law or usage of *England* in the same or the like offences. Fourthly—But no person to be adjudged of life, member, or freehold, without law certain of the province.”*

These acts of assembly indicate the sense of the colonists at this time relative to the extent of the laws of *England* within the province; that for all the purposes of domestic policy or internal provincial government, the special laws of the province, denominated acts of assembly, should be paramount to all other laws; but in defect of these, the laws of *England*, to wit, the common law and such English statutes, as should not “be found inconvenient in the application to this province, should form the rules of right and just.”

The next act of this session, entitled, “An act providing for officers,” demands some animadversion; inasmuch as it exhibits the early usages of the province as to the exercise of that branch of the lord proprietary's prerogative, which relates to the appointment of civil officers. It is as follows:

“The lord proprietary, or his lieutenant general (in his lordship's absence,) may appoint any person to be conservator of the peace, or commander, or commissioner of any county,† wherein he is ordinarily resident, during his abode in that county, or to execute or return any commission to him directed for examining or certifying any matters, and may appoint any person that hath been freed by service to execute any other office or command,‡

* See this summary of the act in Bacon's Laws, 1642, ch. 4.

† “Commissioner of a county” was a term used at this time, and long after, as synonymous to a justice of the peace, who was also one of the justices of the county court.

‡ From this it would appear, that some doubt had been entertained, whether white servants imported into the colony at the expense of others, on condition of service for so many years as agreed upon, were, when “freed from service,” eligible to or lawfully capable of being commissioned to the execution of any office.

so there be reasonable fee allowed for it to be determined by the judge; and yearly, at or afore the end of the county court in March, the council or major part of them then present in court, if it be in the provincial court,* or otherwise the commissioners of the county, if it be in the county court, or the major part of them present in court, shall nominate and recommend to the chief judge, then sitting in commission, such persons as they shall think fitted for to execute the office of *sheriff*, out of which persons the chief judge shall or may appoint one to be sheriff of the county for the year next following, or otherwise may appoint any other not being of the council, and may demand and take such recognizance or security for the well discharge of his office, as he shall think fit, and any person refusing to obey any the lawful appointment aforesaid may be fined and imprisoned till he submit. This act to endure till the end of the next session.”†

CHAPT.
III.
1642.

The mode of appointing sheriffs, here prescribed, was evidently intended to be as nearly conformable to the law and usage in England in that respect as might be. The law and usage in England, relative to the appointment of sheriffs, was at the time of passing this act, (1642,) and still continues the same to this day,—that all the judges, together with the other great officers, meet in the exchequer chamber, (Westminster hall,) on the morrow of All-Souls yearly, and then and there propose three persons to the king, who afterwards appoints one of them to be sheriff.‡ It is true, that by this act of assembly, the appointment of the sheriff is directed to be by the “chief judge;” but, as the lieutenant general or governor was certainly at this time chief judge of the *provincial* court, we may infer, from this act of assembly, that he acted also as chief judge of the *county* court. By which means the prerogative of the lord proprietary, (in whom, by the seventh section of his charter, the appointment of all officers of justice seems to have been vested,) would be

* This affords further proof of what has been before mentioned, that the governor and his council sitting in their judicial capacities, constituted at this time what was then denominated, and ever afterwards retained the name of the “provincial court;” which seems to have been, as before observed, under the “ordinance” or commission of the 15th of April, 1637.

† The above act is recorded in the book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 218, and also among the old acts of assembly in the court of Appeals office, in “Lib. C & WH,” p. 81.

‡ 1 Bl. Com. 340; and the instance in the 16 Car. I. November 6th, 1640, stated in Cro. Car. 595.

CHAPT. saved to him, being in part at least, in this instance exercised by
 III. his deputy, the lieutenant general. It is probable, that prior to
 1642. this act both the nomination and appointment of sheriffs, as well as
 all other civil officers, had been usually exercised by the lieutenant
 general; for, former commissions to sheriffs had issued, as before
 stated, without any mention made of any previous nomination
 by the judges of the courts. This indeed seems to have been
 warranted by what is stated to have been the opinion of the
 judges in the fifth year of queen Elizabeth, when, by reason of
 the plague, the judges could not meet at Westminster to nomi-
 nate the sheriffs, and it was held, that the queen by her prero-
 gative might *make* a sheriff without the election of the judges,
 notwithstanding any statute to the contrary.* But this, as Mr.
 Justice *Blackstone* observes, was "a very particular case,"† and
 was, without doubt, dictated by the peculiar circumstances at-
 tending it. Thus, the novel and peculiar situation of the colo-
 ny, on its first settlement, together with the express authority
 vested in the lord proprietary by his charter, as before mention-
 ed, and doubts probably existing as to the extension of the En-
 glish statutes on this subject to the province, might have hereto-
 fore induced the lieutenant general to the exercise of this prero-
 gative without the interposition of his judges; which power, we
 must suppose, to have been again exercised by him on the ex-
 piration of this act. It being a temporary law, "to endure only
 till the end of the next session," it must then have expired,
 (not being then continued,) and the former practice of the lieuten-
 ant general revived.

Reflections might here be indulged on the still more popular
 mode of electing sheriffs adopted by the state, when it assumed
 its independence. The experiment of vesting the choice of this
 subordinate ministerial officer in the people at large, had been
 made in the earliest stage of the English constitution. Even
 prior to the statute of 28 *Edw.* 1, ch. 8, (by which "the king
 granted unto his people, that they should have election of their
 sheriff in every shire,") such officers, according to lord Coke,
 "were of ancient time by force of the king's writ in every sever-
 al county chosen in full or open county by the freeholders of
 that county."‡ But, as stated in the preamble of the statute of 9
Edw. ii. st. 2, (by which that mode of election was altered,)

* *Dyer*, 225.

† 1 *Bl. Com.* 342.

‡ 2 *Inst.* 558.

“from the grievous complaint of the people of great oppressions and disheritances to them by reason of insufficient sheriffs,” the nomination of them was, by that statute, vested in the judges, as before described. It cannot possibly be denied by any one tolerably acquainted with the present mode of the administration of justice in Maryland, that the like injuries (or “disheritances,”) accrue to the people of this state from “insufficient sheriffs.” That legislators should be freely elected by the people, is a principle which should be carefully cherished; but that such subordinate officers, whose intercourse with the people tempts them to use undue means of election, particularly in the promised relaxation of the duties of the office, should be chosen by popular suffrage, experience both in England and Maryland has clearly demonstrated to be incompatible with a just execution of the laws.

CHAPT.
III.
1642.

Several other acts passed at this session, which seem to display a manifest solicitude in the legislature to provide, as well as the situation of the province would then admit, for the due administration of justice. Separate and distinct acts were made on the following subjects :—“touching appeals ;—appointing the order, wherein causes shall be heard and determined ;—appointing court days ;—providing remedy for plaintiffs in certain cases ;—for the forms of proceedings in causes ;*—ordering some things touching the trial and judging of causes ;†—touching verdicts and judgments ;‡—providing some rule for executions ;—touching execution upon corn and tobacco ;—and an act touching causes testamentary ;§—Regulations were also made on the im-

* As discussion frequently arises in our courts of justice, relative to an adherence to English precedents and “forms of proceedings in causes,” this act is inserted here in note (XLVII.) at the end of this volume, in illustration of such discussions.

† This act seems to afford additional evidence of the desire of our provincial Roman Catholics to adopt the forms and usages of the Roman civil law. See the act in note (XLVIII.) at the end of this volume.

‡ The extraordinary power given by a clause in this act to a judge over a jury makes it worth the attention of the reader.—See this clause in note (XLIX.) at the end of this volume.

§ This act seems to have been supplementary to the former act of 1641, ch. 3, with nearly the same title, as before stated in p. 188 ; except in the following clause :—“All causes of *complaint against the judge* in testamentary causes, and all probats, accounts, or other matters testamentary, wherein he is *interested as a party*, shall be heard and determined by the judge of the *provincial court*, according to the law or usage of the province, or former precedents of the same or the like nature, (to be determined by the judge,) and in defect of such then according to his sound discretion.”—“Lib. C. & WH.” p. 91.

CHAPT. III. portant subjects of "succession to goods of intestate persons" and "succession to land."*

1642.

Something like a new criminal code was also instituted. By an act, entitled, "an act ordaining punishment for certain greater capital offences,"—"These shall be adjudged capital offences within this province; that is to say, all offences done within this province, which are declared *treason* by statute of 25 *Edw.* iii. ch. 2. And all offences of wilful *murther* to be determined by the judge as near as may be to the law of England. And all offences of conspiring the death or destruction, or of attempting any violence against the person of the lord proprietarie of this province, or (in his absence) of his lieutenant generall, or of holding any private intelligence with a declared enemy of the province, or of rising in armes or of meeting against the lord proprietarie or (in his absence) against his lieutenant generall; and the offender (whether principal or accessary) in any of these shall suffer paines of death, and shall forfeit all his or her lands, goods and chattels to the lord proprietarie, and the wife shall lose her dower, and the offender's blood shall be corrupted."

By another act, entitled, "an act ordaining punishment for certain lesse capital offences,"—"These following shall be judged likewise capital offences within this province; that is to say, all offences of homicide, piracy, robbery, burglary, sacrilege, sodomy, sorcery, rape, polygamy, and larceny, to be determined by the judge as near as may be to the laws of England; likewise all offences of wilful burning or destroying a house, or stack of tobacco, corne, or hay, of another man's, or of cutting or plucking out another's eyes or tongue; and the offender, (whether principal or accessary afore that offence committed,) in any of these shall or may be judged to suffer paines of death, or of burning in the hand, or losse of member, or to lose all his or her lands for life, goods or chattels, dignity of office, or may be outlawed, exiled, imprisoned during life, or adjudged to serve the lord proprietary and his assigns for the term of 7 or lesse years, (except he be a gentleman,†) or may be otherwise corporally

* This act, entitled, "an act touching succession to land," seems to have been intended as a supplement to the bill of 1638-9, No. 16, entitled, "an act for the descending of land," with some few alterations; (see before, p. 157-8.) As this subject may be of some use in tracing some ancient titles to lands within this province, the reader will find it in note (L.) at the end of this volume.

† The lord proprietary had landed estates in the province, cultivated as other estates of the planters were, at his lordship's own expense. Persons thus condemned to serve him might possibly be employed as labourers on one of his

corrected or put to shame, as the court shall think the crime to deserve. This act to endure till the end of the next assembly." CHAPT.
III.

1642.

By a third act, entitled, "an act for punishment of some offences not capital,"—"Every person striking any officer, juror, or witness, in presence of the court in and for the doing of his office, or counterfeiting the hand, or sign manual, or any of the seals of the lord proprietarie, and using such counterfeiting hand or seal within his lordship's jurisdictions to the prejudice of another, or wilful falsifying, corrupting, or embezzling of a record, or giving false witness upon oath in court, or persuading or hiring another to give such false witness, may be judged to lose his or her right hand, or to be burned in the hand, or to any other corporal shame or correction, (not extending to life,) or be fined as the court shall think.—This act to endure till the end of the next assembly."

Two other distinct acts were made; one, "for the punishment of drunkenness," and the other "for the punishment of swearing." By the former, "every one convicted of being drunk shall forfeit 100 lb. of tobacco toward the building of a prison or such other publique use, as the lord proprietarie or his lieutenant general shall think fit, or if the offender be a servant and have not wherewith to satisfie the fine he shall be imprisoned or sett in the stocks or bilboos fasting for 24 hours."—By the latter, the punishment of swearing was, "by forfeiting 5 lb. tobacco," to be applied as directed by the preceding act.

This code, if it may be so called, wears at this day an aspect of considerable severity in many instances. It is for the most part, however, but a renewal of the bills before mentioned, introduced at the session of 1638–9, upon which we have already been diffuse in our observations.* The penal laws of a nation are said always to exhibit the state of morality therein. As these acts of assembly of this session are the first penal laws of the province, now appearing upon record, which had been regularly enacted as laws, unless the bills before mentioned be considered as such, they could not with propriety have been passed over unnoticed.

plantations; but being *assignable*, according to the act, his lordship or his lieutenant general might sell such convict to some other inhabitant of the province for the term of seven years. The exception of a "gentleman," as above, might possibly find some justification, when we reflect, that the personal labour of such a character would not be worth much on a Maryland plantation.

* See ante p. 120, and what follows in chap. II.

CHAPT.
III.

1642.

A very important law also, entitled, "an act touching taking up of land," was first passed at this session, and again re-enacted at the next session in the same words. It seems to have been principally intended to regulate the priority of warrants for surveying land; but, as it is altogether a municipal regulation relative to private property, it does not fall within the duty of our animadversion.*

Some other acts of this session, to wit, "an act providing for the planting of corn;" another, "limiting the exportation of corn;" and "an act against engrossers and forestallers," seem to indicate an apprehension of, or at least a desire to guard against, a scarcity of that necessary article of life. The provision, "for the planting of corn," seems to have been much to the same purport as the former acts on that subject.†

Prepara-
tions
against the
Indians.

Soon after the assembly had rose, more zealous preparations appear to have been taken, to meet the hostilities of the Indians; who now seem to have been excited to their utmost height of inveterate enmity towards our colonists. A commission was issued on the eighteenth of August to captain Cornwaleys "to levy men and command them." This gentleman seems to have been always, from the first settlement of the colony, considered as its guardian genius. In debates of the assembly he appears as a popular leader, and in all military expeditions he is confided in as the ablest commander.

The colony of Virginia had been so fortunate, as to have settled, not long before this time, "peace and friendship" with the Indians of that province. They had nevertheless experienced some injuries and murders from the Indians of Maryland, particularly the Nanticokes, upon whom punishment or retaliation had been on that account made by the Marylanders. This probably excited the Nanticokes to a still more deadly enmity towards our colonists. Of all the tribes or nations of Maryland, except the Susquehanocks, the Nanticokes appear to have been the most warlike; for, they were frequently so bold as to carry their hostilities across the bay against the inhabitants of St. Mary's. The eastern shore of the province seems, however, to have been at present the seat of their warfare; as we may infer from the governor's proposal, that military aid from Virginia should meet him at the isle of Kent; which appears in a letter

* See it at large in *Kilty's Landholder's Assistant*, p. 248.

† See before p. 147, and 176.

written at this time by the governor of Maryland to the governor of Virginia. CHAPT.
III.

1642.

Previous to a perusal of this letter, it will be proper to state two paragraphs of an instrument of writing, entitled, "A Remonstrance of the Grand Assembly," published in Virginia, under the signature of "William Berkeley," the governor thereof, dated as, "given at the grand assembly, at James city, the first of July, 1642," and purporting to be a representation "to the colony of the weighty consequences and benefits redounding thereto by their late consultations." Among various other articles of this legislative statement are the following:—

"6thly. The treaties and overtures with the governor and province of Maryland, requiring time for maturing, and very successful in the bay of Chissopiack.

"7thly. The settling of peace and friendship with the Indians by mutual capitulations and articles, agreed and concluded on in writing, by many messages and interruptions lengthened."*

The former or sixth article, as above, is involved in some obscurity; especially as no such "treaties," or "overtures" thereto, of any kind, prior to or at this time, appear on our records. It is possible, that a proposal by the governor of Maryland to the governor of Virginia, that the latter should assist the former in checking the hostilities of the Maryland Indians, might form the ground-work of, or "overtures" towards, a treaty of alliance offensive and defensive between the two provinces against the savages; but no treaty or basis thereof, except the letter just mentioned, appears among our records. As this letter throws some light on our provincial transactions of this date, it is here inserted at large.

"Copy of a letter written by our governor to the governor of Virginia.

"HONOURED SIR,—The knowledge I have of your most diligent and provident care of the general good and safety of all his majesty's subjects committed to your charge, and the affection you have to ours of this province your neighbours and fellow subjects, makes me confident to present unto you the necessity, which the barbarous massacres committed formerly upon John Angood and four others of his majesty's subjects in his company belonging to your colony, and now lately again upon eight more belonging to this province, together with the burning and rob-

* See this document at large in *Burk's Hist. of Virg.* vol. 2, p. 64.

CHAPT. III. 1642. bing of their houses, hath drawn both upon yourself and me [the necessity*] of setting forth an expedition against the said Indians, for the vindicating of the honour of our nation, and also to deter the like outrages upon us for the future. For which purpose I have desired this gentleman, colonel Trafford, to present my requests unto you for the aid of one hundred men, furnished and set forth, fitting for the service, from you out of your colony, to be with me at the isle of Kent, where I have appointed our rendezvous on the first of October next, where I will have in readiness one hundred more, if this province will be able to afford them with the safety of those that must be left at home in their houses. Sir, the first harm was yours from the foresaid Indians, which I was desirous to have revenged, had I been able, being nearest to the habitations of them, (as I formerly have done upon the Nanticoke Indians, for the death of one Rowland Williams of Accomack, before the joint expedition made by both colonies.) Since we have received this last mischief, by reason yours by Angood's death and his company was no sooner punished, therefore I doubt not, but you will apprehend the necessity, which our general safety for the future requires, that it be no longer deferred, but put in execution with all the speed that may be, to which I will not fail to add what help I can from hence. This gentleman, colonel Trafford, will be able to inform you of all things, that you shall desire to know concerning it from hence. His worth and abilities are known unto you, wherefore give me leave to refer you to him, and rest your faithful friend to serve you,

"From St. Mary's, } LEONARD CALVERT."†
23d August, 1642. }

From an expression in the foregoing letter, we might infer, that a "joint expedition" against the Indians had been made on a former occasion by both colonies before the one now proposed; but our records afford no other evidence of it; nor do they inform us, whether the aid now asked of Virginia was ever rendered. The government of Maryland continued to make exertions for its own defence. A fort had been erected at or near the Patuxent, in the neighbourhood of which, it seems, were

* These words in brackets are not in the record, but appear to be necessary to make the sense complete.

† See this letter in the book entitled, "Council Proceedings from 1636 to 1657," p. 64.

several scattered settlements of the English. Mr. Henry Bishop, who had before this received injury from the Indians of Patuxent in plundering his live stock, was entrusted with the command of the fort in that quarter, to which the colonists were directed to repair upon any alarm. A proclamation was also issued by the governor, bearing date, August 28th, 1642, for the purpose, as it is expressed therein, "of reducing the inhabitants living weakly dispersed in several plantations to some places of better strength, in case of any sudden inroad of Indian robbers and pillagers." It was, therefore, commanded, "that no inhabitant of this colony presume (until further order or liberty in that behalf,) to discharge, or concur to the discharging of, three guns within the space of one-quarter of an hour upon any occasion whatsoever, unless upon mustering days, except there be reasonable occasion to make an alarm, and that every one, upon the sight of any Indians in any suspicious manner, without delay, use the best means he may to make an alarm by the discharging of three guns, and that every house-keeper, upon the hearing of an alarm, answer it by shooting off three guns, and that every house-keeper inhabiting in St. Michael's hundred, between St. Inigoe's creek and Trinity church, immediately upon the knowledge thereof, carry such women and children as are belonging to his family unto St. Inigoe's fort; there to abide for one month from the date hereof, unless liberty be sooner given to the contrary, and I do hereby command and authorise the sheriff of this county to take charge and command of all the persons able to bear arms within the division aforesaid, and to appoint six able men to keep guard in the said fort day and night during the time aforesaid, and I do further appoint and command, that the house-keepers of the other part of St. Michael's hundred, from Trinity creek southward, do carry their women and children to the house of Thomas Steerman, and that lieutenant Thomas Baldrige take charge of the said southern part, and keep guard in like manner as is afore appointed for St. Inigoes, and further that the house-keepers of St. George's hundred do carry their women and children to the house of Mr. Weston, and that George Pye take charge and command of the said hundred, and appoint and keep guard in like manner as is afore appointed for St. Michael's hundred, and that all several persons of the said several hundreds, able to bear arms, be obedient and assistant unto the said several persons respectively

CHAPT. appointed to take charge and command thereof as aforesaid, as
III. they will answer the contrary at their peril, and of all the several
1642. commands aforesaid I do hereby require every one to take notice so far as it may or shall concern them, upon the several pains as by martial law may be inflicted upon the contemners of an ordinance so much importing to the common safety."

The particular nations of Indians, against whom these preparations of defence were now made, and from whom the colonists apprehended danger, seem to be specified in another proclamation issued by the governor in about a fortnight after the former, as follows:—

"By the lieutenant general.—These are to publish and declare, that the Sesquihanowes, Wicomeses,* and Nanticoque Indians are enemies of this province, and as such are to be reputed and proceeded against by all persons. Given at St. Mary's, September 13th, 1642."†

In the midst of these embarrassments of the colony from Indian hostilities, our attention is unavoidably called off, in pursuance of the order of time, to a new arrangement of the government of the province, by the arrival of new commissions, from the lord proprietary in England, both to the governor and his council, and in consequence thereof a new institution of the government.

* As to the *Wicomeses*, see the note before in p. 214.

† See these two last proclamations in the book, entitled, "Council Proceedings from 1636 to 1657," p. 66, 67.

CHAPTER IV.

The new commission for the government—An assembly called and meet— Their proceedings—Debate on the act “touching passes,” or the right of emigration— Exemption of the governor and his servants from militia duty—Debate on the act “providing for officers”—The act “for the support of the government”— An act for the impressment of vessels, men, &c.—Intercourse with the Indians regulated—Colonists compelled to take patents for their lands— Perplexed state of affairs in the province—governor Calvert returns to Eng- land—Appoints Giles Brent, esq. to be governor in his absence—Exemption from military duty—Mr. Giles Brent qualifies as governor—Measures to repel the incursions of the Indians—Proceedings of the New Haven settlers on the Delaware—Instructions from the lord proprietary to governor Brent—Influ- ence of the civil war in England on the affairs of the province—An ordinance of parliament relative to the colonies—New instructions from the lord proprie- tary to governor Brent—Embarrassed state of the trade of the province—In- gle’s rebellion—Hostilities with the Indians—Treaty with the Susquehanocks, proposed by Mr. Lewger—Disagreement of governor Brent thereto—Governor Calvert returns from England with a new commission—Some few variances between the new commission and the former—Perturbed state of the colony— Attempt to call an assembly—Clayborne repossesses himself of the isle of Kent.

Although the government had been hitherto, since the year 1637, conducted under the authority of the lord proprietary’s commission of the 15th of April of that year, herein before fre- quently referred to ; yet many defects were obvious in that in- strument, and which evidently dictated an amendment therein. Influenced most probably by such causes, and possibly also by the representation of his brother—the governor, his lordship, about this time, thought it proper to reorganize his government of the province by a new commission, which should remedy the faults and deficiencies of the former. Although this new com- mission is expressed at the end of it, as it now stands on the record, to have been—“Given under our great seal of our said province of Maryland, at our fort of St. Mary’s, within our said province, on the fourth day of September, *anno domi.* 1642,” and immediately under it in the record book is subjoined a note, purporting that,—“The same fourth of September was the said commission published at the fort at St. Mary’s ;” yet, as it must have been drawn and executed, under his lordship’s hand and seal in England, where we may suppose he then resided, in the same form and manner as that of 1637, the real date must be

CHAPT.
IV.

1642.

The new
commis-
sion for the
govern-
ment.

CHAPT. referred to some precedent time.* It will be necessary here, to
 IV. state only those material parts of this commission, wherein it
 1642. varies from the former.† It commences with “revoking and determining all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to any other person whatsoever for or concerning the government of our said province of Maryland, and discharging all persons whatsoever from our council, who heretofore have been of our council there. Nevertheless, considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established,” his lordship then proceeds to constitute his brother Leonard Calvert, esq., lieutenant general, chancellor, chief justice, &c.—In the clause, whereby power is given to the lieutenant general to call assemblies, he is authorised “in the name, stead, and place of the lord proprietary to give assent and consent unto all such laws and ordinances as he, our said lieutenant general, &c., shall think fit and necessary for the good government of our said province of Maryland, and which shall be consented unto and approved of by the freemen of the said province, or the major part of them, or their deputies to be assembled by him the said lieutenant general, &c., there from time to time for the enacting of laws within that province, provided that the said laws so to be assented unto by him our said lieutenant general, there in our name, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law, we do hereby declare, shall be in force within the said province, till we or our heirs shall signify our or their disassent thereunto under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same under our or their hand and seal.”

A material variance will readily be perceived between the clause in the last commission of 1637, giving power to call an assembly, who were only to assent to such laws as should be propounded to them, and the clause to the same purpose in this commission of 1642, as above; in which last, the right of originating laws, by any member in the house, seems to be ceded,

* From a reference in the commission to Giles Brent, of December 23d, 1643, (hereafter to be stated,) the real date of the above mentioned commission appears to have been, November 18th, 1641.

† The reader will find it inserted at large in note (LI.) at the end of this volume.

at least by implication ; subject however to a very inconvenient proviso at the end of the paragraph, by which the lord proprietary reserves to himself the right of annulling such laws by his final disassent theretò. This paragraph seems to be a literal copy of his lordship's letter to his brother, of the 21st of August, 1638, on the same subject, as before stated.*

CHAPT.
IV.
1642.

In the former commission of 1637, also, power was given to the lieutenant general "to call, adjourn, and dissolve assemblies;" without mentioning the power of *prorogation*, probably considering the power of adjournment as synonymous to that of prorogation. In the present commission "power was granted to the lieutenant to adjourn, prorogue, or dissolve the assemblies to be called." We shall see, however, this power of *adjournment*, hereby vested in the lieutenant general questioned at the next session of assembly.

Some alteration also took place under this commission in the mode of appointing members of the council. Under the former commission three persons, particularly named therein, were specially appointed by the lord proprietary himself "to be of our council of and within the said province." By the present commission power was granted to the lieutenant general "to pass under the great seal of the province commissions for authorizing such person and persons to be of our council there as we shall from time to time appoint by *warrant* or direction under our hand and seal."

The supreme court of justice, (commonly called the provincial court, consisting of the lieutenant general and the council,) was constituted or rather continued under the present commission in nearly the same words and expressions, as those of the former.

The provision made in the former commission for appointing a deputy governor, in case of the "absence" of governor Calvert, was by this extended also to the case of his "death;" the unfortunate incident of which subsequently occurring, as we shall see, occasioned some embarrassment to the government.

In pursuance of the power vested in the lieutenant general, by the foregoing commission of the lord proprietary, of issuing a special commission for the purpose of appointing a council, one was passed, in the name of the lord proprietary, under the great seal of the province, bearing date the 5th of September,

* See before, p. 94-5.

CHAPT. 1642, (the next day after the promulgation of the former,) where-
 IV. by "colonel Francis Trafford, esq., Thomas Cornwaleys, esq.,*
 1642. John Lewger, esq., William Blount, esq. and John Langford, esq., were assigned and appointed jointly and severally, to be of our *privy council* within our said province of Maryland."—The same commission contained also a clause appointing them and every of them "justices and commissioners for conservation of the peace within our said province," with power to issue warrants for offenders against the peace, and to bind them over "to appear before our lieutenant general and the council," before whom were held both the provincial court of the province and the county court of St. Mary's. No assignment of power to them to hear and determine appears in this commission, for that power was vested in them as the council, by the preceding commission to the lieutenant general.†

On the same day of the last mentioned commission to the council, another issued to John Lewger, esq., "to be our secretary of our said province of Maryland, and also judge of all causes testamentary and matrimonial within our said province;" and "our principal officer and keeper of the acts and proceedings of us and our lieutenant general and council there for the time being, and of and for the entring and recording of all grants by us or our heirs to be made of any lands or offices within our said province, and for the entring and recording of all other matter, acts and things, which by any instructions, laws, or ordinances made or given or to be made or given for or concerning our said province, as also our collector and receiver of all our rents, revenues, and customs, and of all ameracements, tolls, profits, and duties whatsoever already due or payable; to hold the said offices during our pleasure."‡

An assembly called. It seems, from concomitant circumstances, that the arrival of the foregoing new commission from the lord proprietary in Eng-

* The following entry appears in the book, entitled, "Council Proceedings from 1636 to 1657," p. 68.—"16th September, 1642, captain Cornwaleys, esq. being demanded to take the oath of a councillor," (under the above commission it must be understood,) "absolutely refused to be in commission or to take the oath." We have no authority for forming even a conjecture of the motives of this gentleman in refusing to act as a councillor under this new commission. It is certain, that he appears on a variety of occasions to have been much opposed to the proceedings of the governor.

† See this "Commission of the Council" in note (LI.) before referred to, at the end of this volume.

‡ See this commission in note (LI.) before referred to, at the end of this volume.

land had dictated to the lieutenant general the expediency of calling another assembly. For, on the 22d of August, about a fortnight preceding the promulgation of the foregoing commission, the governor issued his proclamation, "requiring *all free-men* inhabiting within the province to be at an assembly to be held at St. Mary's, on Monday the fifth of September next, either by *themselves*, or their deputies or delegates."—The assembly accordingly met on that day, on which day also the two last commissions issued, as we have just seen, for the new organization of the government, by the appointment of a new council and secretary. All the members present on this first day amounted only to eighteen, including the lieutenant general or governor. Notwithstanding it had been, to all appearance, permanently settled at the last session, by the order, afterwards enacted into a law, that "any ten members of the house, at any time assembled, at the usual or appointed time, (whereof the lieutenant general and six *burgesses* to be seven,) should be a house," yet this constitutional law of the last legislature, seems to have been now disregarded. For, it appears from the journal of this session, that one hundred and eighty-two persons, whose names are therein inserted, were entitled to seats in the house, of whom one hundred and six, including the eighteen above mentioned, appeared either "by themselves or their *proxies*," and the names of seventy-six are inserted, who were amerced 20 lb. tobacco each "for not appearing upon call by themselves or proxies." Seventy-three inhabitants of the isle of Kent, (included in the enumeration of the one hundred and six just mentioned,) had appointed Mr. Giles Brent as their proxy.* What occasioned this departure from the representative principle established by law, we have no grounds to ascertain, unless it be that unhappy tendency, which power has, when vested in the populace at large, to occasion a species of intoxication, and to deprive them of a rational use of that liberty which is so essential to their happiness. That this was the case now in England, is demonstrated in history, and our colonists, as it seems from symptoms before ex-

CHAPT.
IV.
1642.

And meet.

* This affords some *data* for forming an estimate of the number of inhabitants of which the colony at present consisted. (Supposing the number (182) to have been heads of families, and counting five to a family, the colony would have consisted of about nine hundred inhabitants—men, women, and children; of whom three hundred and sixty-five would be appropriated for the isle of Kent. Mr. Brent, (proxy for that island,) was at this time lord of the manor of Kent fort, and probably resided thereon at or near what is called Kent Point.

CHAPT. hited and herein noticed, had largely imbibed those unfortu-
IV. nate discontents.

1642. One of the first subjects, which occupied the attention of the
Their pro- house, demands some notice here, on account of its importance
ceedings. as a constituent principle in the provincial government. We
have before hazarded a conjecture, that the word "freemen,"
which so often occurs in the earliest proceedings of the province,
and indeed in the charter itself, applied only to one who was a
"freeholder."* This became a question at this session, as ap-
pears from the following entry on the journal.

"Mr. Thomas Weston, being called, pleaded he was no *free-
man*, because he had no land nor certain dwelling here, &. ; but,
being put to the question, it was voted, that he was a *freeman*,
and as such bound to his appearance by himself or proxie;
whereupon he took place in the house."

The doubt expressed here by the member himself, that, not
being a *freeholder*, he was not to be considered as a *freeman*,
demonstrates at least, that some opinion to that purpose had been
heretofore entertained in the province, and that the members of
the house had been heretofore generally *freeholders*. Although,
therefore, the house here expressly decided, that it was not ne-
cessary, in order to entitle a freeman to a seat in the house, that
he should be a freeholder; yet, from the temper of the times and
irregular constitution of the house at this session as a legisla-
tive body, much stress cannot be laid upon this legislative deci-
sion of so doubtful a point.

Another important question occurred on this first day of this
session. An act of assembly had been passed at the last ses-
sion, entitled, "an act touching passes;" which, although unim-
portant in itself, was now productive of considerable discussion,
involving two important principles; First, whether the lieuten-
ant general, as president (or speaker,) of the house, could refuse
to put a particular question to the house, moved for by any mem-
ber; and secondly, how far the right of every inhabitant to de-
part from the province might be restricted.

The act of the last session, which seems to have occasioned
this uneasiness, was of the following tenor.—"No man, after
the publishing hereof in the county, may, without pass from the
chief judge of the county in commission for the time being,†

*See before chap. I. p. 47-8, note.

† The chief judge of St. Mary's was the governor himself, and by a commis-
sion in February, 1640, Mr. Giles Brent had been constituted chief judge, as

Debate on
the act
"touching
passes," or
the right of
emigra-
tion.

transport any inhabitant out of the province, being indebted by judgment upon record, or another man's servant, or the party's own servant, and indebted by judgment upon record, (except it be an apprentice,) or otherwise obnoxious to justice; and a pass may not be granted to any one until he have set up a note at the usual place at the least five days before, (whereof one to be a Sunday or holy day,) signifying such his intent to depart out of the province: and if the party, of whom the pass is desired, know or be informed, that the party is indebted, or another man's servant, or the party's own servant as afore, or obnoxious to justice in some other county,* he may not grant a pass, till the party have obtained a certificate from the commander of the county, which may not be granted afore another like note there set up to the purpose, and in the manner as aforesaid, upon pain that the offender or offenders to the contrary shall make fine and recompense to the parties grieved. This act to endure till the end of the next assembly.”†

CHAPT.
IV.
1642.

This act, it seems, had occasioned particular uneasiness in the isle of Kent, and accordingly, on the first day of the session, Mr. Brent, who was proxy, as before mentioned, for the inhabitants of that island,—“moved, as from the inhabitants of Kent, that it might be declared by the house, whether the inhabitants may freely without leave depart out of the province, being engaged or obnoxious to justice.—And it was answered by the governor, that he did not consent, that it should be decided by or in this house.”

“Then the lieutenant general adjourned the house till the third beating of the drum, four o'clock this afternoon.”

Why the governor should have exercised this intemperate warmth on the subject, does not appear. The purport of Mr. Brent's motion is here expressed on the journal rather obscurely; but it seems to have been merely to ascertain the sense of the house, whether the act relative to this subject, to wit, the “act touching passes,” before stated, should be continued or not, in-

well as commander, of the isle of Kent.—See this commission in note (XXXIX.) (before referred to,) at the end of this volume.

* This must have been intended as prospective, that is, in contemplation of other counties to be laid out; for, there was but one county yet in the province. The isle of Kent, by the last regulation, was to be considered as a hundred of St. Mary's county.

† See this act, in the record book, entitled, “Assembly Proceedings from 1637 to 1658,” p. 241, and in “Lib. C. & WH,” p. 99.

CHAPT. asmuch as it was a temporary act "to endure till the end of the
IV. next session."

1642.

The motion rested, as above, until the next morning, (September 6th,) when "Mr. Brent desired, it might be put to the question, whether the house had power to decide the right of a freeman to depart out of the province at their pleasure, unless they were indebted, or otherwise obnoxious to justice.*

"The governor refused to put it to the question to the freemen to determine thereof as judges of the matter in question."

The governor could have objected to the right of the house to legislate upon the subject on no other principle than that of the common law, (mentioned in the note below,) which prohibited a subject from departing out of the realm without special license from the king; and that, as the lord proprietary had the same prerogative, in virtue of his palatine *regalia*, no inhabitant of the province also could depart therefrom without special license from his lordship or his lieutenant general.

The governor ought to have been sensible, that these were not times for an English governor of a province to aspire to such a high toned exertion of prerogative. His more prudent mentor, (Mr. Secretary *Lewger*,) probably thought so; for he immediately rose, and (according to the journal,) "spoke, not to the question, but as a *councillor*;†—that he thought the matter *was* to be put to the question, and that it could not be rightfully denied to them; and that the house hath power to decide such things as shall be put to the question, both by former usages and precedents of the house, and by the writ calling them to consult, and by his lordship's intent, that the house should have such

* We have touched upon this subject before in note (D.) in our "Introduction to this History," (already published,) wherein we have mentioned the doubt which was entertained, after the repeal of the statute of fugitives, (5 *Rich.* II. c. 2,) by that of 4 *Jac.* 1, c. 1, whether the common law did not prohibit any subject from going out of the realm without special license previously obtained. But although this position was endeavoured to be maintained, shortly after the repeal, by the crown officers, particularly by the attorney general and the recorder of London in the case of the King vs. the earl of Nottingham, in the court of exchequer, 7 *Jac.* 1, (see *Lane's Rep.* 42,) yet the law seems to have been subsequently settled, agreeably indeed to some former decisions on the point, that every man might go out of the realm, when he pleased, without any license for that purpose, unless, as Mr. Brent has expressed it above, he was "indebted or otherwise obnoxious to justice," in which case he might be prohibited from emigration by a writ of *Ne exeat regno*.

† Mr. Lewger was appointed one of the council by the commission of the 5th of September; see the commission note (LI.) before referred to.

power, expressed in the acts formerly consented unto and sent over by his lordship.”

CHAPT.
IV.

1642.

The governor, perceiving perhaps that he had gone too far, seems to have partly withdrawn his objection. “Upon further debate it was declared by the governor, that it was the common right of all inhabitants to depart out of the province at their pleasure, unless indebted or obnoxious to justice, or *unless there be some transcendant cause, for the safety of the people*, for the lord proprietary or his substitute to over-rule that right in some particular cases for a convenient time.”

The closing condition,—“for the safety of the people,” seems to wear too much of the appearance of an insidious statement of the position. There is scarcely an act of political despotism to be found in history, whether exercised by a mob or by a single tyrant, by a parliament or by a king, which has not its pretended foundation—in the safety of the people. We are not able, at this day, to perceive readily any pressing necessity, which should have induced the governor to an anxiety for the exercise of the royal prerogative of prohibiting the inhabitants of the province from the free enjoyment of the right of departure. Possibly indeed some apprehensions might have been entertained at this time by the government, that emigrations from the province would too much weaken the colony, especially when they were suffering under a war with the Indians. It is certain, however, that the foregoing statement of the law by the governor upon this question, did not give general satisfaction; and a protest of some of the members of the house, “touching the departure of inhabitants out of the province without leave,” was read on the last day of the session.*—“The lieutenant general then consented, that this should be entered for his answer, instead of the former, touching that point,—that he declareth it to be the common right of all inhabitants to depart out of the province at their pleasure, unless indebted or obnoxious to justice.” He must also have finally yielded to the house their right of legislating upon the subject; for, “An act touching passes” appears among the laws of this session; which, in order to shew its variance from the former, may be here inserted.

“No man after publishing hereof in the county without consent of the chief judge of the county in commission for the time

* This is so stated in the journal, but no protest appears therein as the record now exists.

CHAPT. being, shall transport any inhabitant out of the province that is
 IV. obnoxious to justice for some malefice, nor without consent of the
 1642. party or parties interested may transport any one against whom
 there is an action or judgment (unsatisfied upon record, or that
 is another man's servant, or the party's own servant, and liable
 as aforesaid, (except it be an apprentice,) upon pain of making recom-
 pense to all parties grieved. This act to endure for three years
 from this present day."*

Exemp-
 tion of the
 governor
 and his
 servants
 from mili-
 tia duty.

Another cause of uneasiness arose, on the first day of the ses-
 sion, on a bill, drawn and returned to the house, by a committee
 for that purpose, entitled, "An act for an expedition against the
 Indians." After it had been read, the governor demanding to
 be exempted from the levy, it was put to the question, whether
 a clause for his exemption should be inserted in the bill, and
 that it should, was voted by thirty-eight voices,—denied by one
 hundred voices."†

This uncourtly rejection of the governor's request or demand
 seems to indicate, that a general opposition to his measures run
 deep in the minds of the colonists at this time. We should have
 supposed it to have been the part of a patriotic governor to have
 volunteered his services at the head of an expedition against the
 natural enemies of the colony. When a chief shrinks from his
 duty, he must expect an abatement in the ardour of his follow-
 ers. Notwithstanding this vote of the house, however, it ap-
 pears, that such a clause of exemption, not only for the gover-
 nor himself, but for his servants, was finally inserted in the bill,
 though not without the opposition of captain Cornwaleys, who
 voted against it, "by reason of the clause exempting the gover-
 nor's servants."‡

* See this act of Assembly in the book, entitled, "Assembly Proceedings from 1637 to 1658," p. 295. In illustration of these acts of assembly it may not be amiss to mention, that the statute of fugitives, (5 Rich. ii. c. 2,) imposed the penalty of a forfeiture of the vessel on the master of any vessel, who carried the persons departing out of the realm. A law, similar to these Maryland acts, relative to "passes," is said to exist at this day in the English colony of Jamaica. "Every person, who has resided six weeks in that island, must obtain from the office of enrollments a passport before he takes his departure; and the captain, who admits him as a passenger without receiving such passport, is liable to a penalty of £1000."—Extract from a "Tour through Jamaica," in 1811, published in the Port-folio for 1812, vol. 1, p. 536.

† These "voices" on both sides included the votes of the members present as proxies, as well as in their own right, the house consisting, as before mentioned, of only eighteen members.

‡ The record states, that this "bill" passed by all except that captain Cornwaleys "denied it for 15 of his proxies of St. Michael's hundred."

The first section of the act, containing this exceptionable clause may be here inserted, "It shall be lawful to the lieutenant general or other captain or captains by or under him authorised to make an expedition against the Susquehanahs or other Indians as have committed the late outrages upon the English at such time and in such manner as he or they shall think fit, to take out of every county or hundred within the province the third man able to bear arms, such as he or they shall think fit to go upon the said expedition, except that the lieutenant general and his apprentices* are not to be reckoned in any hundred to any purpose of this act." The other sections of this act detail the manner in which the men were to be equipped.

CHAPT.
IV.
1642.

As all the acts of the last session had been limited "to endure till the end of the next session," much of the discussion of this session consisted in debates about the propriety of continuing or rather re-enacting such acts as had been passed at the former session. Among these, that entitled "An act providing for officers," under which the appointment of a sheriff had been regulated, as before stated,† received at this session a singular opposition. The act had been construed, as giving to the lieutenant general power to appoint any person whatever to any office or command whatever, "so there be reasonable fee allowed for it." Captain Cornwaleys and Mr. Brent are stated in the journal as being much opposed to re-enacting this law, "as being unnecessary, as giving away their liberties, and as being unlimited in point of sheriff's recognizance and number of offices to be imposed, and as against common right and decency—compelling men to be hangmen."

Debate on
the act
"providing
for officers."

These objections, except that relative to the office of sheriff, seem to be founded on rather a strained construction of the act. The power of the lieutenant general to appoint any person to any office is therein expressly confined to "any person that hath been *freed by service*;" and, although this might have been a hardship upon such men, yet the hardship does not appear to have been of such a nature as to have been very oppressive upon men of that class of life, who, just emancipated from manual servitude and labour, might be supposed to have been glad of any office, to which "a reasonable fee" was annexed. To "com-

* The word "apprentices" may be understood here, as synonymous with "indentured servants" belonging to the governor.

† See before, p. 222—5.

CHAPT. pel" even such men "to be hangmen," indeed, might be deem-
 IV. ed an act of oppression; but, unless some particular and un-
 1642. common incident had then recently occurred wherein such oppression had been exercised, it was a remote conclusion, that the governor would exercise power in so arbitrary a manner. It may be added, that the common law at this day, still imposes on the sheriff, as a part of the duty of his office, that of being a hangman, unless he should be able to procure some other person, at his own expense, to perform the disagreeable duty.* This part of their objections to the act must, therefore, have been mere declamation. As to the "unlimited" power in taking recognizance of the sheriff, what is a well known truth at this day, might, perhaps, have been as much so then, that is, that too much caution as to the *sufficiency* of such recognizance cannot well be used. The paucity of inhabitants in the colony, or at least of those well qualified for offices, might have been a reason also of "imposing" a number of "offices" on one man. Upon the whole, these objections seem to exhibit symptoms, rather of unreasonable discontent than of a temperate and patriotic opposition to arbitrary measures of government.

The governor, however, appears to have shown on this occasion a temperance and mildness, which does him much honour. "He consented, that an exception should be made of the office of hangman; and that the sheriff's recognizance might be limited to such a value as the business might amount unto committed to his trust, as 10,000 lb. tobacco, or the like sum.

"With these amendments the bill was thought fit to pass, by the governor, secretary, surveyor,† and Mr. Binks, denied by by the other four."

* It is not impossible, that this objection—"of compelling men to be hangmen,"—might have some allusion to *Dandy's* case before stated, (p. 179,) but, there does not appear to have been any thing *illegal* in that case, since the office of "public executioner" was voluntarily undertaken by Dandy, as a condition of pardon on a judgment or sentence of death. Our Saxon ancestors thought differently of the office of 'hangman.' "*Cornifex fuit splendidi officii, appellatio apud Saxones nostros. In anno 1040, Rex Hardecanutus Thronum suum carnificem, et alios magnæ dignitatis viros, Londinum misit.*" Spelman's Gloss. verb. *Carnifex*.

† Mr. John Langford had been appointed surveyor-general, by commission dated March 24th, 1641, (1642, N. S.) "during his natural life." He was consequently the "surveyor" above mentioned. He was an able and zealous friend of lord Baltimore not only now in this province, but afterwards in England, as will appear in this history. He had before this, in the year 1638, filled the offices of sheriff and coroner in the isle of Kent. (See before, p. 89.)

From this it may be inferred, that there were only *eight* members present. The house being equally divided, the bill, consequently, did not pass; and accordingly we do not find any act with that title in the list of the laws passed at this session. The governor, therefore, must have been under the necessity of exercising the lord proprietary's prerogative in selecting and appointing a sheriff, or the colony would have been deprived of that ministerial officer so essential to the administration of justice according to the laws of England. In confirmation of which supposition, we find that a commission issued, in about ten days afterwards, to Edward Parker, bearing date September 15th, 1642; appointing him "high sheriff of our county of St. Mary's until the first of October, 1643," and authorizing him "to appoint his bailiff or under-sheriff in every hundred within the said county at his pleasure."

CHAPT.
IV.
1642.

The act of this session entitled, "an act for the support of the government," varied somewhat in expression, though not apparently in substance, from that of the last session with the same title. By this—"For the better support of the lord proprietary all tobacco shipped to be transported out of the province, (except to Virginia, and except to any of the king's dominions where customs are used to be paid to his majesty,) shall pay a custom of five in the hundred to his lordship." The exception in the former act was—"to England, Ireland, or Virginia as the last port."—The former also was to endure only "till the end of the next session;"—this was "to continue for three years."—As the export of tobacco from Maryland to Holland in Dutch vessels became, in a few years after this period, an object of legislative attention, we may suppose, that some trade of this sort now constituted a basis for these customs given to the lord proprietary.

There were but few original acts passed at this session. Most of them, (twenty-five in number,) were but the laws of the last session re-enacted. The only original act of this session, yet unnoticed by us, was that entitled, "an act providing some things for the better safety of the colony." This seems to have been made to enable the lieutenant general "to press or take away vessels, men, provisions, arms, ammunition, or other things necessary for defence, at the most usual rates of the country, and the price or hire thereof to charge upon the inhabitants. Any person receiving corporal harm in the service, whereby he is disabled from labour or his calling, to be maintained at the charge

An act for
the im-
pressment
of vessels,
men, &c.

CHAPT. of the province.”—Compensation to be made to any person
 IV. “for loss of property by forsaking his house and goods.*
 1642.

Except some petty plundering committed by the Indians on the inhabitants of St. Clement’s hundred, some time in October of this year, for which Mr. Gerard and Mr. Neale were authorized by commission from the lieutenant general to threaten and punish them, if necessary, our materials furnish no other occurrence of the present year than the appointment of Mr. Giles Brent, by commission of the 16th of December, “to be commander of our isle and *county* of Kent;†—to be chief captain in all matters of warfare;—and to be chief judge in all matters and things civil and criminal, happening within the said island, not extending to life or member or freehold.” In the same commission also, “William Ludington, Richard Thompson, and Robert Vaughan, gent., were appointed to be commissioners within our said island to all powers and effects as to commissioners of a *county* by the law of the province do or shall belong.”‡ Commissioners of a county appear to have been then considered as having, not only the powers of conservators of the peace at common law, but as thereby authorized to hold a county court.§

* “Assembly Proceedings from 1637 to 1658,” p. 300.

† This seems to be the first passage, which occurs in the records, wherein the *isle of Kent* was considered as a *county*. By the bill of 1638-9, (No. 13.) entitled, “an act for the government of the isle of Kent, (before referred to, and inserted at the end of this volume in note XXXI,) the island was erected into a *hundred*, to be considered as within the *county* of St. Mary’s, “until another county should be erected of the eastern shore, and no longer.” It appears to have been the sense of those who administered the provincial government in its earliest period, that no *legislative* interposition was necessary for the erection of a county within the province. It possibly might have been so considered, in conformity to the original distribution of England into counties; which is said to have been the sole executive act of king Alfred. (*Spelman’s Gloss. verb. Comitatus.*) Nor is any act of assembly to be found for the original erection of any of the counties in this province, (except that of 1650, ch. 8, “for the erecting of *Providence* into a county, by the name of *Ann Arundel*,”) until the year 1695, when by an act of that year, (ch. 13,) a county was “constituted” by the name of *Prince George’s county*, and the *bounds* of the several counties of St. Mary’s, Charles, Prince George’s, Talbot, Kent, and Cecil were therein “regulated;” and, by a distinct clause therein, the *isle of Kent* was “made part of Talbot county.”—We may, therefore, suppose that the power of erecting a county within the province was considered as a part of the palatinate *regalia*, and a personal prerogative of the lord Baltimore as lord proprietary of the province; but no proclamation or other *executive* document for the erection of any county within the province in the earliest period of the settlement of the province, or prior to the restoration of the lord proprietary in the year 1658, appears on the records.

‡ “Council Proceedings from 1636 to 1657,” p. 92.

§ See the act entitled, “an act for judges,” passed at the last July session and re-enacted at the following session, before stated, p. 221.

These gentlemen seem, therefore, to have been now first authorized to hold a county court in the isle of Kent.

The colonists appear now to have extended themselves, in a scattered population, over a considerable portion of that peninsula or neck of land formed by the Patowmack and Patuxent rivers. How far to the westward from the Chesapeake, it does not clearly appear.* The peninsula seems, however, to have been sufficiently occupied by them to authorize the government to claim a right of excluding the Indians from entering their territories within a prescribed line drawn from the Patuxent across to the Patowmack. This measure they were provoked to adopt in their own defence against the predatory hostilities of the natives; though it appears to have been of short continuance. The bickerings and discontents among the colonists, imported perhaps from the mother country, seem to have rendered them apparently insensible to dangers from the savages.

The governor states the reasons for this measure in a proclamation, issued by him for that purpose, bearing date the 16th of January, 1642, (O. S.)

“Whereas I am determined, by all possible care and diligence, to provide, that the colony be put in safety, not only from all danger of the Indians, but from fear of any, I have thought fit to publish and declare hereby, that I intend instantly to dispatch messengers to the neighbouring Indians to forewarn them of coming among or near the English till further order be taken therein, and to charge them not to come on this side the neck between the back river of Patuxent and the main river towards Nicholas Hervey's, neither by land or water, upon peril of their life that shall adventure further or without the said bounds either by land or water, and if there shall be any occasion of message or treaty with me, to send with the messenger or messengers a flag or fane of white fustian, with his lordship's arms in wax ensealed thereon, to be visibly carried or borne by such messengers or an Englishman in their company; Therefore, I do hereby authorize all or any the English of this colony to shoot or kill any Indian or Indians in any the parts about Patuxent river, that shall be seen or met either upon the land or water without the said bound after six days after the date hereof, except some

CHAPT.
IV.

1643.

Inter-
course
with the
Indians re-
gulated.

* On the 7th of March, 1641, (O. S.) the surveyor was directed to lay out “for captain Thomas Cornwaleys, esq., 4000 acres of land in any part of Patowmack river upward of Port Tobacco creek.” From which we may infer, that settlements were then forming at that distance westward from the Chesapeake.

CHAPT. Indian "or Indians or some of them have or bear visibly such
 IV. white flag or fane aforesaid, or with an Englishman in their com-
 1643. pany, or shall without resistance yield themselves to the Eng-
 lish upon demand; and upon coming of any such Indian mes-
 sengers to bring him or them to me without delay."*

Besides this measure of excluding the Indians from the occupied territories of the colonists, it was contemplated, by those who were entrusted with the administration of the government, to "set forth" an expedition against them, so as by such defensive annoyance, either to drive them further from the colony or to quiet their hostilities. But uneasiness seems to have arisen among the colonists, lest the discharge of their personal military services on this occasion should so interfere with the preparatory labours for the ensuing crop as to deprive them of the means of livelihood. In the first settlement of the province, the clearing of the grounds, intended for the growth of either Indian corn or tobacco, rendered the latter part of the winter and the commencement of the spring a most important part of the year with the planters, and their industry and labours during that season enabled them to calculate with some probability upon the profits or result of their succeeding crops. To allay these uneasinesses the governor issued the following proclamation:

"By the lieutenant general.—Whereas I understand of divers jealousies and fears abroad in the colony touching the Indians, and the expectation of a great charge and hinderance this year either in making a march upon them, or in guarding against them, to the disanimation of the people and foreslowing their usual diligence and alacrity in proceeding in their labours for the next crop, for remedy whereof, and to assure them of what consideration is had of their safeties and ease, I have thought fit to publish and declare hereby, that all possible diligence is and shall be used for the furnishing the county with ammunition, and that, as soon as conveniently may be, there shall be an expedition set forth against the Indian enemies of this province, at the sole charge of his lordship, (excepting the persons of the soldiers to make the expedition withall, for whose service the country shall be charged,) and that capt. Cornwaleys, esq., is appointed and hath undertaken to go as general of the said expedition,†

* "Council Proceedings from 1636 to 1657," p. 92.

† His commission for that purpose appears on the records immediately preceding the above proclamation, and bears the same date.

to whom I have given all purchase* that shall be made upon the enemy during the said expedition, to be by him disposed of for the encouragement of volunteers, that shall set themselves forth and serve at their own charge, and for the reward of his soldiers as he shall find them to deserve; and further for the greater encouragement and relief of those that shall go upon this service, I will use all circumspection that may be, that the said expedition shall be so made, and (by God's help,) performed, that it shall be no considerable hindrance to any one's crop, and that [as to] the debts of those whose present abilities will not reach to the satisfying of their creditors without the grievous pressure and disabling them for their necessary subsistence for the future, I will use means with their creditors, (if they be inhabitants of this province,) to forbear until the next year, which I have already assurance of from some of the chiefest.—Given at St. Mary's, 23d January, 1642.”†

CHAPT.
III.
1643.

It has been before observed, that the colonists of St. Mary's had not only been liable to the invasions of the Susquehanock Indians, but that the Nanticokes also had been so bold as to cross the bay and commit hostilities upon them. Accordingly war had been formally declared against them as well as the Susquehanocks, by a proclamation for that purpose in September last, as before mentioned. But it would seem, that within a day or two subsequent to the last mentioned proclamation of January 23d, the governor had agreed to a truce with the Nanticokes, for the purpose of forming a treaty of peace with them. In order, therefore, that they should not be liable to the severe penalties denounced against those Indians, who should presume to intrude within the limits of the colonists on the peninsula between the Patowmack and Patuxent rivers, as prescribed by the proclamation of the 16th last, it became necessary to issue another proclamation, setting forth this matter and revoking the former, as follows:—"By the lieutenant general.—Whereas by a late proclamation dated the 17th‡ of this instant month the English were authorised to kill any Indians in any the parts about Patuxent

* The word "purchase" here must mean the right of booty or plunder of whatsoever kind, that might be taken from the Indians. It was so understood occasionally by old English writers nearly cotemporary with our first colonists.—See *Johnson's Dict.* who cites *Shakspeare*.

† "Council Proceedings from 1636 to 1657," p. 95.

‡ This is so in the record; but it evidently alludes to the one before stated, which is dated in the record, the 16th.

CHAPT.
IV.
1643.

river, that should be met with upon the land or water on this side the neck between the back river of the Patuxent and the main road towards Nicholas Hervey's, with certain exceptions therein mentioned ; now I do hereby, upon some reasons and accidents since happening,* utterly repeal and reverse the said proclamation, and strongly prohibit, upon pain of death, that no English, within the county of St. Mary's or any other part of the province do kill or shoot any Indian whatever, (other than such as he shall know to be Sesquihanowes or Wicomeses,) unless first assaulted or put in bodily fear of his life by the Indian ; And whereas, by one other proclamation, dated the 13th of September last, the Nanticoke Indians were declared to be enemies of the province, I revoke likewise hereby the said declaration, and do publish and declare that there is a treaty of peace betwixt me and them, and a truce of six weeks agreed upon for the finishing of the treaty, and hereupon have taken them into his lordship's protection for the time aforesaid, but for the better securing of all English inhabitants of the province from all harm that may happen to them through the treachery and falsehood of any Indians, I do forbid all the said English to entertain or harbour in their houses any Indian whatsoever without special license or appointment from me, and, upon any Indian's refusal to depart upon necessary demand given, to expel them by violence, but not to the killing them unless they shall assault the life of the English.— Given at St. Mary's this 26th of January, 1642."†

Colonists
compelled
to take pa-
tents for
their lands.

Amidst these hostilities of the Indians, and some subsisting discontents among the colonists, it became necessary for the government to pay some attention to some abuses and ill practices which had arisen in the colony relative to "rights to land." Divers adventurers into the province had obtained, it seems, in virtue of the "conditions of plantation," on their emigration here, warrants for the quantity of land due to them on such emigration. It would seem, that after having their given quantity of land laid out for them, agreeably to their warrant, they had seated themselves thereon, and so remained without giving themselves the trouble or expense of obtaining grants or patents for the lands thus obtained by them, whereby it appeared, that

* It is possible, that some friendly Indians had been unjustly shot and killed, under the above recited proclamation of the 17th (16th) of January. But this is mere inference, the records being entirely silent as to the "reasons and accidents" above alluded to.

† "Council Proceedings from 1636 to 1657," p. 97.

they meant to occupy the lands without making themselves liable to pay any rent for the same to his lordship. To prevent this intended fraud, a proclamation was issued, (April 2d, 1643,) requiring that "all persons pretending any right unto any lands within this province by virtue of any former conditions of plantation or special warrant, shall, within twelve months from and after the date hereof, come and make appear their right so pretended, and take out grants of the same upon pain of being refused grants after the said time."**

CHAPT.
IV.
1643.

It will be proper to advert in this place to two several attempts on the part of the governor to call an assembly of the province about this time. A proclamation was issued on the 16th of December last, (1642,) for a general assembly of the freemen to meet at St. Mary's on the third of February ensuing. But by another proclamation of the first of February, 1642, (1643, N. S.) the assembly was dismissed and all men discharged of their attendance on the day appointed. Another proclamation issued on the 28th of March, 1643, for the freemen to be at a general assembly on the 3d of April following. But, (as Mr. Bacon has observed,) "it does not appear by any record, whether they met accordingly, or what their proceedings (if any) were."† These occurrences strongly indicate the unsettled state of affairs in the province at this period of time.

Perplexed
state of af-
fairs in the
province.

Much perplexity also seems to have pervaded the mind of the governor at this time through causes, which our materials do not sufficiently develope. Notwithstanding the danger in which the colonists were placed, from the hostilities of the Indians, particularly the Susquehanocks, as appears from what precedes, and the resolution entered into by the government of repelling their invasions by an expedition against them, as before mentioned, yet this measure seems to have been soon unaccountably relinquished, and the frontiers of their settlements on the peninsula left in a defenceless state. To this purpose a proclamation was issued by the governor, on the eighth of April, as follows:—

"Whereas by a proclamation, bearing date at St. Mary's, the 23d of January last,‡ upon certain hopes then presumed upon, of means to go a march upon the Susquehanahs, I did declare

* "Council Proceedings from 1636 to 1657," p. 98.

† See Bacon's edition of the laws of Maryland, under the date of 1643; and the record book in the Council Chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 304.

‡ Ante, p. 248-9.

CHAPT.
IV.

1643.

to the colony, that there should be an expedition set forth at his lordship's charge, with other things therein contained, which means not being yet found answerable to my hopes, I do think fit to advise further of the intended expedition, and therefore do hereby annul and revoke the said proclamation, and the obligations therein undertaken on his lordship's behalf, and all powers and commissions therein given touching or concerning the said expedition, until I have further considered thereon."*

Governor
Calvert re-
turns to
England.

This seems to have been connected with a further resolution now formed by the governor, dictated apparently by the perplexed state of the affairs of the province, and, perhaps, in part occasioned also by the confusion arising from the civil wars now raging in the mother country. From some cause not assigned nor clearly to be inferred he had formed the resolution of returning home to England, and, in virtue of his last commission from his brother, he appointed Mr. Giles Brent deputy governor in his absence. To make this appointment known, he issued the following proclamation:—

Appoints
Mr. Giles
Brent to be
Governor
in his ab-
sence.

"By the lieutenant general.—Whereas I am determined to go for England, I do hereby publish and declare to all inhabitants of this province, that I have nominated, appointed and elected Mr. Giles Brent, esqr., to be lieutenant general, admiral, chief captain, magistrate, and commander, as well by sea as land, of this province of Maryland and of the islands to the same belonging, in as large and ample manner as his lordship by his commission under the great seal, bearing date at St. Mary's the 4th of September, 1642,† hath authorised me, for the present during my intended absence, until further order from his lordship therein.—Given at St. Mary's this 11th April, 1643."‡

Exemp-
tion from
militia
duty.

On the same day, which probably was but a day or two before his departure, he executed an instrument of writing, which will appear to us at this day but illy calculated to conciliate the esteem and affection of the colonists. It will be recollected, that at the last session of assembly an act had passed, entitled, "an act for an expedition against the Indians;" in which act a clause of exemption from military service, not only for the governor himself but for his "apprentices," had been inserted and passed, though much opposed by some influential members of

* "Council Proceedings from 1636 to 1657," p. 98.

† See this commission, as before referred to, in note (LI.) at the end of this volume.

‡ "Council Proceedings from 1636 to 1657," p. 99.

the house, particularly captain Cornwaleys.* In virtue of this clause in this act, as we may suppose, he now, immediately preceding his departure, granted a special writ of privilege, or *charter of exemption*, if it may be so called, in the name of the lord proprietary, to a certain "Nathaniel Pope and his menial servants."—The instrument of writing is as follows :—

CHAPT.
IV
1643.

"Cecilius, by our sovereign lord king Charles, lord proprietary, &c., to all persons to whom these presents shall come, greeting; know ye, that we, for divers good causes us thereunto specially moving, have exempted, and by these presents do exempt, the persons of Nathaniel Pope and his menial servants being nine in number, from all watches and wardings, and from all attendance at musters and trainings, and from being called or commanded out of or from his house to or upon any levy, march, or party without or against his will or consent, and we do hereby will and require all our captains, commanders, and officers whatsoever, not to infringe or violate any the exemptions aforesaid at their peril.—Given at St. Mary's this 11th of April, 1643. Witness our dear brother, &c."†

Having no authority to determine in what capacity Nathaniel Pope stood in relation to the lord proprietary or his brother the governor, we are not enabled to decide with certainty upon what principle of law the aforesaid charter of exemption was granted. If Pope was a *tenant* upon some of the demesne-lands of the lord proprietary *reserved* and cultivated for his own use, or if he acted as an overseer or steward of such estate specially reserved by the lord proprietary, to be cultivated at his own expense and for his own use, it does appear, that in virtue of the lord proprietary's *jura regalia* his *tenants in ancient demesne* or his menial servants upon such demesnes, like those of the king, would have been entitled to various privileges;‡ and although an exemption from military or militia duty be not particularly mentioned as one of those privileges, yet it appears to be within the like reason, especially as that of being exempted from *taxes* and *tallies*. That particular orders or profession of men, such as attorneys of the court of king's bench, were entitled to *writs of privilege* exempting them from militia duty or mustering in trained bands, seems to have been adjudged in one or two cases

* See before, p. 242.

† "Council Proceedings from 1636 to 1657," p. 99.

‡ 4 Inst. 269. 2 Inst. 542. 3 Durnf. and East. 73

CHAPT. prior to the first settlement of this province.* More recent cases
 IV. also acknowledge this privilege of exemption, until a late mili-
 1643. tia law in England gave the alternative of either providing a substitute or paying a certain sum of money, when the militia service ceasing to be merely *personal*, the privilege ceased also.† But, waving the legality of this measure of the governor, it certainly appears to have been dissatisfactory to the people of the province, and consequently at this period of time highly impolitic.

Mr. Giles
 Brent qual-
 ifies as
 governor.

The governor must have left the province in a day or two after the last mentioned transaction; for, on the 15th of April, 1643, Mr. Giles Brent qualified as governor, in virtue of his appointment before mentioned,‡ by taking the oath of lieutenant general, which was administered to him by the secretary—Mr. Lewger. It will be recollected, that the fifth section of the act of 1638, (1639, N. S.) ch. 2, entitled, “An act ordaining certain laws for the government of the province,” required the lieutenant general to “take an oath to administer equal justice to all persons, without favour or malice of any one.” No form of oath, however, was prescribed by this act; but it appears, as we have before stated,§ that this clause of this act had reference to one of the thirty-six bills of the same session, engrossed but not passed, entitled, “An act for the several oaths to be taken by judges and public officers,” wherein the oath of a *judge* is prescribed and stated at large. But no special oath for the *lieutenant general*, except as *judge*, is prescribed by that bill. As the oath now taken by Mr. Brent developes in some measure the nature of his powers at this time as lieutenant general, it is here inserted, as follows:—

“You swear, that you will be true and faithful to the right honourable Cecilius, lord proprietary of this province of Maryland, and that you will defend and maintain to the utmost of your power all his just rights, interests, royal jurisdictions, and

* See *Venables's* case, (in the first year of Charles the first,) in *Cro. Car.* 11, which seems to have been founded on the precedent in *Coke's Entr.* 436, and another case in the 22 Jac. 1. *Officin Brev.* 164.

† See this subject fully discussed by Mr. Justice *Blackstone* in his Reports, in *Gerard's* case, (2 *Bl. Rep.* 1123,) which turned principally on the construction of the statute above alluded to, viz. 2 *Geo.* 3, ch. 20.

‡ No formal *commission* to Mr. Brent, as lieutenant general, appears on the records; nor other act of appointment, but the proclamation of the 11th of April, before stated.

§ See before, p. 140.

seignory in to and over the said province, and the islands thereunto belonging; and you will faithfully serve him as his lieutenant of the said province; and in all other offices committed to your charge you will do equal right and justice to the poor and to the rich within the said province after your cunning wit and power, according to the laws of the province;* you shall delay or deny to no man right and justice; you shall not know of any appempt against his lordship's right and dominion in to and over the said province and the people therein, but you shall resist and oppose it to the utmost of your power, and make the same known with convenient speed to his lordship; and you shall in all things faithfully counsel and advise his lordship according to you heart and conscience. So help you God.

In presentia { Capt. CORNWALLIS,
EDWARD PARKER."†

Immediately following this oath and the entry on the record relative to the administration thereof, and of the same date, viz. April 15th, a commission in the name of lord Baltimore, is recorded, appointing "Colonel Francis Trafford, esqr., John Lewger, esqr., William Blount, esqr., Giles Brent, esqr., John Langford, esqr., and James Neale, esqr., to be of our privy council within our said province of Maryland, &c., *ut supra* in commission of council page .".‡ This evidently refers to the commission of the council of the 5th of September, 1642, before stated,§ in which all of the above named gentlemen, except Giles Brent and James Neale, had been appointed members of the council. Mr. Giles Brent had probably been omitted in the former commission, on account of the office of commander of the isle of Kent being intended for him, to which he was subsequently appointed, (as before stated,) and now made lieutenant general. Mr. James Neale then being the only new member of the council, he was consequently the only member, who was now to qualify by taking the oath of a councillor, it being deemed, as we may suppose, unnecessary for the rest to take the oath again. We can account in this manner only for the mentioning

* This clause seems evidently to relate to his office of *judge*, or chief justice of the province or provincial court, and inserted apparently in lieu of the oath of a *judge* according to the form of that oath as prescribed by the bill.

† "Council Proceedings from 1636 to 1657," p. 99.

‡ The blank above is so in the record.—See "Council Proceedings from 1636 to 1657," p. 100.

§ In note (LL.) at the end of this volume.

CHAPT. on the record Mr. Neale's qualification only; which is in these
 IV. words:—"James Neale had the oath of a councillor of state ad-
 1643. ministered to him by the said Giles Brent according to a form of a
 bill drawn up in assembly, 15th March, 1638," (1639, N. S.) "en-
 titled an act for several oaths." This entry has been before stated
 as a confirmation of the suggestion, that the thirty-six bills of
 the before mentioned session of 1638-9, were deemed laws of
 the province, and as such referred to in the title of the act of
 that session, entitled, "An act ordaining *certain laws* for the go-
 vernment of this province."

Measures
 to repel the
 incursions
 of the In-
 dians.

These matters being thus arranged, and the government thus reorganized, as it were, some endeavours on the part of those now invested with the administration of the affairs of the province appear to have been exerted for a more effectual check to the incursions of the Indians. The "outrages" committed upon the colonists seem to have been done principally by the Susquehanocks, who appear to have been the most formidable tribe or nation, from whom the colonists had to apprehend mischief. As the attacks of this nation was principally on the frontier settlers in St. Mary's county, it is probable that their incursions were by land, or marauding parties, from their own country on the borders of the Susquehanah river to the peninsula between the Patuxent and Patowmack; though it is possible, that the territories claimed by them might have comprehended all that tract of the province lying on the western shore of the Chesapeake from the Susquehanah to the Patuxent, bounded on the west by the Alleghany mountains; for, if other intervening tribes inhabited any portion of it, they must have been tributary or subject to them, as we may infer from the free right of passage through the said territory exercised by the Susquehanocks. To put a stop to their invasions, captain Cornwaleys was again resorted to, as the most proper person to conduct an expedition against them. Whatever were the causes of difference between him and the late lieutenant general—Calvert, who was now gone to England, it is probable that the present lieutenant general—Mr. Brent—might deem it prudent to use conciliatory measures with the *captain*, (as he was usually called,) and by persuasion induce him to exert his influence in providing means for the defence of the province. In pursuance of these measures two commissions were issued by governor Brent, or at least two appear upon the record, to captain Cornwaleys; but, as no date is affixed to the

latter, it is uncertain whether they were both issued on the same day, or on two successive days. As these commissions exhibit the state of the military affairs of the province, and the irresolution which seems to have unfortunately pervaded the minds of those entrusted with the government, as to the proper mode of defence of the province, together with some incidental circumstances, it is thought proper to insert them here.

CHAPT.
IV.
1643.

“Cecilius, &c., to our trusty captain Thomas Cornwaleys, esqr., greeting; we, relying much upon your known prudence and experience in martial affairs, do hereby appoint and authorise you, to make an expedition against the Susquehanoughes or other Indians, as have committed or aided the late outrages upon the English, at such time and in such manner as you shall think fit; and to take out of every county or hundred within the province the third man able to bear arms, such as you shall think fit to go upon the said expedition; and to require every or any county or hundred, to furnish the said men for such expedition with all necessaries according to the law in that behalf;* to have the said men so ready furnished at such rendezvous at such time as you shall appoint; and the men so levied, and all other volunteers, to command as captain; and with them a war to make upon the Indians aforesaid in such manner and with all such powers and authorities whatsoever for the doing, commanding, or appointing of any thing toward, for, or in the said expedition, and concerning the same, over all persons or goods within the province, or for the vanquishing or spoiling of the enemy, or any other thing touching the said war, to have, use, or exercise the same in as ample manner, power, and effect, to all intents and constructions, as may be had, used, and exercised in time of war by any captain general of an army by the law or use of war; and we require all officers, soldiers, and other persons whatsoever within our said province to obey and respect him the said Thomas Cornwaleys in the nature and quality of captain general of the said expedition for and during the said expedition upon pain of all such punishment as by martial law may be inflicted. Given under our great seal at St. Mary’s this 17th of April, 1643. Witness Giles Brent, esqr., our lieutenant general of our said province.”†

* The law, here alluded to, was the act passed at the last session, of the 15th of September, 1642, entitled, “An act for an expedition against the Indians,” before stated, p. 242, the expressions of which are closely pursued in the above commission.

† “Council Proceedings from 1636 to 1657,” p. 101.

CHAPT. In order to enable captain Cornwaleys more effectually to carry
 IV. into execution this intended expedition, in pursuance of the
 1643. foregoing commission, powers were vested by commission, of the same date, in "lieutenant Thomas Baldrige of St. Michael's hundred,"—"requiring him to repair to every house within his hundred, and by the oath of the house-keeper or others whom he should think fit, (which oath authority was hereby given him to administer,) to inquire what number of persons be in every house able to bear arms; what guns fixed or unfixed, what swords or other weapons, what quantity of powder and shot, and of what sort of shot; and to take the deposition of every one in writing with his or her hand or mark thereunto, and to return all such depositions unto the lieutenant general, or Mr. Secretary."* Another commission, of the same tenor and words, appears to have issued on the succeeding day, (April 18th,) to James Neal, for St. Clement's hundred. It is possible, that these two hundreds comprised the frontier settlements of the county; and the inquiry therefore became more particularly necessary as to their state of preparation for defence.

These proceedings appear to have been in pursuance of the measures contemplated by the assembly in such case when they passed the before mentioned act, entitled, "an act for an expedition against the Indians." But it would seem, that this compulsory method of draughting "every third man" was not relished by the planters; or at least that the *captain* preferred the command of an army of "volunteers" to a collection of unwilling soldiers, in whom would probably be found a deficiency of zeal as well as spirit. To gratify this influential commander in his wishes, it would appear, that the other commission to him, before spoken of, was issued, of the following tenor:—

"Cecilius, &c.," (as in the former commission,) "Whereas we are informed of your propenseness to go a march upon the Sesquihanowes, and that several volunteers to a considerable number are willing and desirous to be led out by you upon such a march upon certain conditions treated and agreed between you and them, We, approving very well of such your and their forwardness for the vindication of the honour of God and the christian and the English name, upon these barbarous and inhuman Pagans, do hereby authorize you to levy all such men as shall be willing to go upon the said march, and to lead and conduct

* "Council Proceedings from 1636 to 1657," p. 102.

them against the Sesquihanowes or other Indian enemies of the province in such time and manner as you shall think fit, and to do all other things requisite for the training of the soldiers, punishing of insolencies and other offences against martial law, vanquishing the enemies, disposing of the spoils, and all other things and matters whatsoever to the said expedition appertaining, in all the same and in as ample manner and powers to all intents and purposes as any captain general of an army may do by the law of war.”*

CHAPT.
IV.
1643.

This scheme of “volunteers” seems, however, to have been scarcely formed before it was relinquished; as may be inferred from the following entry among the proceedings of the council.

“April 18th, 1643.—The lieutenant general and council having taken into consideration the difficulties and almost impossibilities of making a march upon the Indians at this present, upon debate of what is fit to be done for the safety of the colony, instead thereof have thought fit and appointed, that there shall be a company raised of ten choice shott,† with boat, provisions, ammunition, arms, and all things necessary to [be] sent and fortify upon *Palmer’s* island,‡ under such command and according to such instructions and orders as shall be appointed by the lieutenant general * * * is intreated to agree§ with the said soldiers touching their pay and all other conditions during their abiding there in garrison, and to take all things necessary for the arming or providing them at the colony’s charge; and these things are thought necessary to be provided for them, viz. 30 lb. powder, 100 lb. shot, 20 barrels of corn, 1 wherry or shallop, 2 iron pots, 1 pestle, swords or half pikes, and necessary nails to build them a house.

Giles Brent,
John Lewger,
James Neal.”||

Whether this plan of fortifying upon *Palmer’s* island, so as to carry the war, as it were, into the domicile of the Susquehannocks, was ever accomplished, we are not informed; though,

* “Council Proceedings from 1636 to 1657,” p. 012.

† A company of good marksmen, see before 162.

‡ *Palmer’s* island was situated at the mouth of the Susquehanah.

§ The word “is” follows immediately after the word “general” in the record. But something appears to be wanting to make it intelligible. If the lieutenant general was the person who was “instructed to agree,” &c., then the word “who” with a comma inserted after the word “general,” would appear to be the only defect to be supplied. It might possibly, however, refer to captain Cornwaleys or some other commander.

|| “Council Proceedings from 1636 to 1657,” p. 103.

CHAPT. from subsequent mention of there being a fort at Susquehanah
 IV. in the next year, we may suppose, that the fort, contemplated
 1643. according to the last preceding document, was erected.—Our records seem here to make a pause, without recognizing any one transaction for the space of three months. A memorandum then appears, dated “July 18th, 1643,” of a “commission of general to captain Cornwaleys, to have and use all necessary and sufficient power for the making of an expedition against the Susquihanowes or any their aiders and confederates, at such time and in such manner as he should think fit, and to levy soldiers, and all other means necessary for the said expedition, *by way of press* according to that law,* and to have, use, and exercise all power and authority for, in, and during the said expedition, as amply and fully to all intents and constructions as any captain general of an army may have, use, or exercise by the law or custom of war.”†

From this it may be inferred that no effectual measures had been prosecuted during the intermediate space of time just mentioned, to put an end to the hostile invasions of the Indians upon the colonists of St. Mary's. On the contrary it appears, that the colony was now harassed not only by the invasions of the Susquehanocks, but by the hostilities of some Indians from the eastern shore of the province. Of what nation or tribe these eastern shore Indians were, it is not mentioned. It had been before stated, that the Nanticokes had been so daring as to cross the bay for the purpose of attacking the settlements in the peninsula of St. Mary's; and they had been included in the declaration of war against the Indians therein mentioned of the 13th of September last; but, by another proclamation of the 26th of January last, a truce with the Nanticokes particularly had been declared. From the following commission, which immediately follows (in the record) the before mentioned memorandum of captain Cornwaleys's commission of the 18th of July, 1643, and which we may therefore suppose to be of the same date, it would appear, that this truce with the Nanticokes had not been productive of its desirable ends; and that the treaty referred to in the

* This seems to allude, either to the *common law* relative to *impressment* or to an act passed at the last session, (of September 5th, 1642,) entitled, “an act providing some things for the better safety of the colony,” whereby the lieutenant general was authorized “to *press* vessels, men, provisions,” &c.—See the act stated before, p. 245.

† “Council Proceedings from 1636 to 1657,” p. 104.

last mentioned proclamation for the truce as about to take place, if ever finally ratified, yet had not been faithfully performed by them.

CHAPT.
IV.
1643.

"Cecilius, &c., to our trusty captain James Cauther, &c., Whereas the eastern shore Indians [have] not yet [made] satisfaction for outrages, &c.* but [are] ready [to commit] new ones if not prevented, &c., [we] authorize you, with such company as you may, to go upon said Indians or aiders or confederates, as shall be found in any suspicious manner upon any part of St. Mary's neck up to the head of Patuxent river, and them to expel or vanquish and put to death, and their arms or goods to pillage, and thereof to dispose at your discretion, and to pursue them to eastern shore, or thither to go to meet and prevent them, if you may, from coming out upon the English, and to pillage or destroy them, or any other mischief do unto them by [the] law [of] war, until [you] shall obtain peace."†

As lord Baltimore's claim to all the western border of the Delaware bay, and the consequent disputes thereon with the proprietaries of Pennsylvania, form an important part of the history of both provinces, there seems to be a necessity for recognizing, in the order of time, all such events as have any relation to those disputes. We have before mentioned the grounds of the claim set up by the English settlers at New Haven to lands on both sides of the Delaware, and their early attempts to establish a colony there, to which hostile resistance was made by both the Dutch and Swedes in the preceding year, 1642. Mr. Lamberton, their agent, as before mentioned, again experienced in the present year, a renewal of the opposition of the Dutch and Swedes, to his projected settlement. It is thus expressed in the minutes of the proceedings of the commissioners for the United New England colonies held, as before mentioned, on the 19th of April, 1653.

Proceed-
ings of the
New Ha-
ven settlers
on the De-
laware.

"In *anno*. 1643, John Johnson, agent for the Dutch at Delaware, conspired with the Swedes against Mr. Lamberton's life.

*This seems to imply, that "the eastern shore Indians" above mentioned in this commission were the Nanticokes, inasmuch as no late truce or treaty, wherein "satisfaction for outrages" could have been promised, is mentioned to have been held with any other Indians.

† The words in *brackets* above are not in the record; but have been here inserted to make the copy of the commission now on record more intelligible. See "Council Proceedings from 1636 to 1657," p. 104.—This record book, as well as that entitled, "Assembly Proceedings," &c., in the council chamber, appear to be but transcripts from originals not now extant, and abound with such errors or omissions as above.

CHAPT. They traitorously seized and imprisoned his person; charged him
 IV. to have plotted with the Indians to cut off both Dutch and
 1643. Swedes; brought him to trial; and used means to engage and corrupt witnesses against him; but all (by a wise and over-ruling hand of God) failing, they set a large fine upon him for trading within the English limits; in all which the Dutch agent sat as one of the judges in court with the Swedish governor, and, as is conceived, shared with him in the fine.”*—Against these proceedings Mr. Lamberton made complaints to the commissioners for the united colonies of New England now assembled, in September 1643, for the first time after their confederation. Governor Winthrop, of Massachusetts, president of the commissioners, immediately, as it appears, wrote to William Kieft, the Dutch governor of New Netherlands, and to John Printz, the Swedish governor at Delaware, on the subject of these injuries; and soon after received answers, “but without any satisfaction.”† It appears, however, that the commissioners did not at that time think it proper to redress these wrongs by force. They are said to have authorized Mr. Lamberton to *treat* with the Swedish governor, and to give him a new commission to proceed with the trade and plantation at Delaware; “and harmony was restored.”‡

Our documents furnish us with nothing more of the transactions of the government of the province during the present year, except some commissions and instructions sent by the lord proprietary from England. Not long after the arrival in England of his brother Leonard Calvert, late lieutenant general of his province, and most probably upon consultation and advice with him on the affairs of his province, his lordship dispatched new orders and instructions to his present lieutenant general, Giles Brent, esq., which, although they bear date on the 14th of July, 1643, yet do not appear to have been published within the province until the 23d of December, same year. The purport of them was to confirm the appointment, which his brother had made previous to his departure, of Mr. Giles Brent as lieutenant general of the province, but also to restrict him from exercising his powers of lieutenant general in assenting to any laws to be enacted in any general assembly of the province without

* *Hazard's Collections*, vol. II. p. 214; and to the same purpose in p. 164.

† *Ibid.* p. 7, and 320—and *Holmes's Annals*, vol. 1, p. 330.

‡ *Holmes's Annals*, vol. 1, p. 330; who cites Hubbard's MSS.

further authority under his hand and seal, and in case any laws had been enacted in any general assembly held since his brother's departure, viz. since the first of October last, (1643,) he declared his disassent thereto.* Also, after expressing his intention to visit his province in person himself at or before January then next following, he suspended the granting of any more lands within the province until his arrival there. From these instructions it also appears, that governor Calvert, previous to his departure from the province, together with Mr. Secretary Lewger and Mr. Surveyor General Langford, had purchased, in the lord proprietary's name and for his use, "the chapel of St. Mary's and the other buildings and land belonging thereunto;" and in payment thereof had drawn several bills of exchange, to the amount of two hundred pounds sterling, on his lordship, payable in England to captain Thomas Cornwaleys or his assigns. In these instructions his lordship, therefore, thought proper to notify his refusal to accept the said bills, ("by reason of some mistakes in that business," as he therein alleges,†) and that the said bills had been accordingly protested in the usual form. Mention is therein made also of two other bills of exchange drawn by captain Cornwaleys upon "one Mr. Thomas Gerard and Mr. Edward Harris," one for the sum of £30 sterling, and the other for £10 sterling, payable to Mr. Leonard Calvert, which last bills were protested also. He thereupon prohibits governor Brent, or any person deriving authority from him, from granting process or taking cognizance of any suit or complaint whatsoever concerning all or any of the aforesaid bills of exchange, but to suspend any proceeding therein until his arrival in the province.‡

This intention of his lordship, to visit his province during the present year, though not put in execution, may be attributed, not only to the deranged state of the affairs of his province, but to the divided sovereignty of the realm of England between the king and parliament. In consequence of these conflicting powers in the mother country, its sovereignty over the colonies be-

Influence
of the civil
war in En-
gland upon
the affairs
of the pro-
vince.

* This precaution proved unnecessary, as no assembly had been held, and consequently no laws passed in the year 1643.

† It is not impossible, but that the *purchase* at this time of this *chapel*, (by which we may suppose to have been meant a Roman Catholic chapel,) had some connection with the proceedings of the assembly in March, 1642, relative to Mr. Gerard's taking away the keys of the chapel. See ante, p. 200.

‡ See these instructions at large in note (LII.) at the end of this volume.

CHAPT. came uncertain and matter of contention. Hostilities between
 IV. the respective forces of the king and the parliament had com-
 1643. menced some time in August of the preceding year, 1642. After various battles fought in different parts of the kingdom, the advantages and strength of the respective parties appear to have been, at the close of the present year, (1643,) nearly equal. Each retained the supreme power where their military force was superior. The king had fixed his court at the city of Oxford, and the county around it was remarkable for its loyalty. He had also been particularly successful in the west of England, and the counties of Cornwall and Devonshire were entirely devoted to him. His forces under the command of prince Rupert had, about the latter end of July last, gallantly stormed and taken the city of Bristol. The parliament, however, though somewhat dismayed at these successes, still retained their seat at Westminster, and their assumed power and sovereignty over London and a great portion of England. Even prior to any actual hostilities, (in March, 1642, N. S.) they had commenced the making of *ordinances*, which were to have all the force of laws without the assent of the king. Among these were some which seemed calculated to bear in their effects upon the provincial rights of lord Baltimore. In March, 1643, (N. S.) they made one for sequestering the estates of *delinquents*; by which denomination they affected to distinguish the king's adherents. This iniquitous ordinance was in perfect consonance with those insidious propositions for peace, which they had made to the king in the preceding June (1642,) prior to the commencement of hostilities; in one of which they proposed to him, "that the justice of parliament should pass upon all *delinquents*, whether they be within the kingdom, or fled out of it." As the term *delinquents* was then well known to signify, in their estimation, all the friends of the king,* it was a proposition which, they must have known, honour and every moral principle forbade the king from acceding to. Indeed, to an impartial reader of the events of these times, these propositions seem to have entirely changed the grounds of the dispute between the king and parliament. He was, about the time when they were presented to him, so humbled, that he appears to have been willing to have acceded to any terms short of a total abandonment of his friends. Such humiliating demands, as they contained, must have been pre-

* Rapin's Hist. (Tindal's edit.) vol. 9, p. 225.

sented to him through some sinister designs, with expectation that they should be rejected. Time at length developed, that these designs were not founded in a zeal for civil or political liberty, but were the dictates of an abominable compound of religious fanaticism and political ambition; to gratify which, the established hierarchy of the kingdom was first to be prostrated. In furtherance of this purpose, it was constantly deemed by them an essentially necessary artifice to keep up a perpetual cry against the Papists, and an uniform accusation against the king of his cherishing and protecting them. The king certainly was not a Papist; but it was natural for him or any good man, abandoned as he was by the greater portion of his Protestant subjects, to be unwilling to promote a persecution against those, though Roman Catholics, who manifested fidelity and attachment towards him. Among these we may presume lord Baltimore to have been; for we find him soon after the capitulation of Bristol, as will presently be seen, residing in that city, and in process of time his "practising with the king at Oxford and Bristol against the parliament," was subsequently alleged against him as grounds to deprive him of his province.* This leads us to pay some attention to another ordinance of the parliament, passed about this time, bearing date "November 2d, 1643," which as it purports to relate to "all those islands and plantations, inhabited, planted, or belonging to any of his majesty's the king of England's subjects, within the bounds and upon the coasts of America," must have included within its provisions not only the West Indies, but the several colonies also of New England, Virginia, and Maryland. Among other instances wherein the parliament had usurped the acknowledged prerogative of the king, they now resolved to take from him all superintendence over the colonies, particularly his power of appointing therein governors and other officers.† Although it would appear from the preamble to this ordinance of November, that it was intended as a shield to the New England colonies, and resulted from some petition before presented by them to the parliament, yet from the

CHAPT.
IV.
1643.

An ordinance of parliament relative to the colonies.

* Hazard's Collections, vol. 1, p. 624.

† They had also undertaken to legislate in favour of New England, in the first part of the present year, by an ordinance, bearing date, "10 March, 1642," (which was then the 20th of March, 1643, N. S.) exempting those plantations from paying any custom, subsidy, taxation, or other duty for either their exports or imports. See this ordinance at large in Hutchinson's Hist. of Massachusetts, vol. 1, p. 110.

CHAPT. generality of its terms it might have been converted into a sword
 IV. to be waved *in terrorem* over Virginia and Maryland, which
 1643. colonies had not yet acknowledged their exclusive jurisdiction or power. It appointed the earl of Warwick, governor in chief, and lord high admiral of the American colonies; with a council of five peers and twelve commoners to assist him.* It empowered him, in conjunction with his associates, or any four of them, "to provide for, order and dispose all things which they shall from time to time find most fit and advantageous to the well governing, securing, strengthening, and preserving of the said plantations; and chiefly to the preservation and advancement of *the true Protestant religion* amongst the said planters, inhabitants; and the further enlargement and spreading of the gospel of Christ, amongst those that yet remain there in great and miserable blindness and ignorance." This seemed to augur no good to either the "ungodly Virginians" or papistical Marylanders. "It further authorised the commissioners to nominate, appoint, and constitute all such subordinate governors, councilors, commanders, officers and agents, *as they shall judge to be best affected*, and most fit and serviceable for the said islands and plantations; and to remove any of the said subordinate governors, councillors, commanders, officers, or agents, and in their place to appoint such other officers as they shall judge fit. And it is hereby ordained, that no subordinate governors, councillors, commanders, officers, agents, planters or inhabitants whatsoever, that are now resident in or upon the same islands or plantations, shall admit or receive any other new governors, &c. but such as shall be allowed and approved of under the hands and seals of the aforementioned commissioners, or any six of them. And it is hereby further ordained, that the said chief governor and commissioners, or the greater number of them may assign, ratify, and confirm so much of the aforementioned authority and power, in such manner and to such persons, as they shall judge to be fit, for the better governing and preserving of the said plantations and islands, from open violence, and private disturbance

* This council seems to have been in the nature of a joint committee from the two houses. Robert Rich, earl of Warwick, had been appointed by the parliament commander of the fleet, contrary to the inclination of the king, in March, 1643, and as soon as a new great seal was made by the authority of the parliament, in November, same year, (about the time of this first ordinance,) he received a patent creating him lord high admiral of England.—Rapin's Hist. (Tindal's edit.) vol. 9, p. 500, and vol. 10, p. 241.

and distractions.” This ordinance is here stated more at large, CHAPT. inasmuch as it seems to have been intended to form the first IV. stepping stone, as it were, to the subjugation of both Virginia and Maryland to the present power of the parliament and subsequent supremacy of Cromwell, who was one of the before mentioned commissioners under this ordinance.* 1643.

It has been seen, that soon after the arrival of Mr. Leonard Calvert in England, the lord proprietary had deemed it proper to send new instructions or orders to governor Brent, which, although they confirmed the appointment of Mr. Brent as governor, yet restricted him from the exercise of some powers, which would otherwise have been incidental to his office, such as assenting to any laws to be made by a general assembly, and of granting lands. As these restrictions, if of long continuance, would necessarily have been productive of much inconvenience to the inhabitants of the province, his lordship very properly recalled them by new orders or instructions. It is, indeed, to be inferred from both the preceding and subsequent orders relative to these restrictions, that they would not have been imposed, but in contemplation in the first place of his lordship's visiting his province in person, and in the next of the speedy return of Mr. Leonard Calvert to his station as governor. These second orders on this subject are of the following tenor:—"Mr. Brent,—Whereas not long since, when I did conceive that my brother Leonard Calvert would have dispatched his affairs here, so as he might have returned into Maryland again this year, I did, for divers reasons, by a dispatch which I then sent unto you, restrain your power of assenting unto any laws in my name, and of granting any land from me in that province, I have now, upon confidence of your integrity and fidelity to me, thought fit, and I do hereby give you full power and authority to assent from time to time in my name to any law which at any general assembly of the freemen of that province shall be thought fit by you, to be enacted there, in as ample manner as my said brother had power from me to do the same, while he was my lieutenant general there, and no otherwise, that is to say, and my true meaning is hereby to give you power to make every such law, so to be assented to by you in my name, to be in force within the said

New instructions from the lord proprietary to governor Brent.

* See this ordinance at large in *Hazard's Collections*, vol. 1, p. 533; which appears to be the same as that abridged (taken from *Hughes's Abridgment*,) in the same vol. p. 633.

CHAPT. province till I or my heirs shall signify our or their disassent
IV. thereunto under our or their hands and seals or otherwise within
1643. the said province, and no longer; and I do also give you the same power and authority during your government there, under or until I or my heirs shall signify our or their pleasure to the contrary, to grant lands from time to time in my name within the said province, under my great seal there unto any adventurers or planters there, and upon the same terms and conditions as my said brother had power from me to do at the time of his transmitting and entrusting the government of that province unto you; for all which this shall be your sufficient warrant. Given under my hand and seal at arms at Bristol, the 18th day of November, Anno Domini, 1643.

“To GILES BRENT, esq., my } C. BALTIMORE.”*
lieutenant general of my }
province of Maryland.” }

With these instructions his lordship sent also a separate order to Mr. Brent for the appointment of Mr. Thomas Gerard to be one of his council within the province. His reasons for so doing are thus stated in the preamble to the order.—“Whereas I have received good testimony from my brother Leonard Calvert of the good affection and fidelity of Thomas Gerard of St. Clement’s hundred† in the province of Maryland, gent., towards me and my service in the said province, and that he hath deserved very well of me in his diligent endeavours for the advancement and prosperity of my colony there, wherein he hath had occasion to express also *more than ordinary abilities of understanding*,‡ such as may make him capable and useful in advising with upon the most important affairs of that place.”

It has been before observed, that the lord proprietary had *reserved* at this time, “for his own particular use,” several farms, or a manor or manors including several farms within St. Mary’s county; that these were cultivated at his own private expense, and for his own private profit and emolument, under the superintendence of an agent or agents for that particular purpose.

* “Council Proceedings from 1636 to 1657,” p. 112.

† Mr. Gerard was at this time lord of St. Clement’s manor within St. Clement’s hundred in St. Mary’s county. See before, p. 167.

‡ The arrival of Thomas Gerard, “surgeon,” in the year 1638, into the province, is noted in the oldest Record Book.—Being of one of the learned professions he probably had received a “more than ordinary” education also, in addition to his “abilities of understanding.”

With the orders just before stated, he now sent a commission to governor Brent and several other commissioners therein mentioned, styling them "commissioners for his treasury in Maryland," with instructions thereto annexed, both of the same date, as to time and place, as the before mentioned orders, "for the well ordering and disposal from time to time of his stock or stocks of neat or other cattle, and of all other his goods and chattels there, and also of all rents, fines, confiscations, or escheats, tributes or other gifts from the Indians, customs or subsidies granted to him by any general assembly, and all other profits and emoluments belonging to him within the said province; and for the better managing, clearing, letting such farm or farms, manor or manors, or other lands *set out and designed there for his particular use*, according to such directions and instructions as he should from time to time send thither for the purpose."* From the words and expressions of his lordship in other parts of this commission and the instructions, it may be inferred, that he had then some presentiment in his mind, derived perhaps from "the extremity of the present troubles in England," as he expresses himself, that his property in America stood in a very precarious situation. His design in directing, as he did in his instructions, that inventory should be made of all his goods and chattels whatsoever belonging to him within the province, was most probably with an expectation, that, if the parliament's commissioners, under the before mentioned ordinance of November 2d, should deprive him of the government of his province, as was subsequently done, he might possibly still be allowed to retain what was his own *private* property.

The succeeding year opened with no pleasing prospect of a flourishing state of the province. The dissensions of the colonists, whether derived from the then unhappy and distracted state of the mother country, or from their own peculiar situation in respect to the hostilities of the Indians, had prevented them from paying the necessary attention to their plantations and the cultivation of their staple of trade during the preceding year. While more tobacco was grown in the province than was necessary to reimburse the English merchants for the goods and merchandize with which they supplied the colonists, the exportation of that staple might, as it regarded the interests of the province

CHAPT.
IV.
1643.

1644.
Embar-
rassed
state of the
trade of the
province.

* The above mentioned commission and instructions are inserted at large in note (LIII.) at the end of this volume.

CHAPT. only, be very properly allowed to be made to other countries
IV. than the parent state. Hence, as before mentioned, the colo-

1644. nists appear to have been in the usage and practice of exporting some of their tobacco to Holland or the Dutch provinces ; for, we can draw no other inference from the two several acts of assembly, passed at the two preceding sessions, entitled, "an act for the support of government,"—whereby five per cent. on all tobacco exported to other countries than England, Ireland or Virginia, was given to the lord proprietary. But uneasiness seems to have now existed in the province, at least with those entrusted with the government of it, lest the whole of the slender crops of tobacco throughout the colony, of the last year's growth, would not be adequate to the necessary shipments of the present year to England. Proclamation was therefore issued by the lieutenant general, bearing date January 8th, 1643, (1644, N. S.) for the regulation of the exportation of tobacco ; which, as it exhibits the state of the trade of the province at this time may with propriety be here inserted.—"By the lieutenant general.—Whereas, by reason of the unreasonableness of this last past year, small quantities of tobacco have been made within this colony, whereby the ships bound hither out of England for supply of the colony are like to want of their home freight, for provision for their benefit in that point, in as far as the tobacco of this colony's growth will amount, I have thought fit and do hereby prohibit all export of tobacco out of this province after the publication hereof in the several counties respectively by or upon any other vessel or vessels whatsoever, other than ship or ships coming from England, until the said ship or ships be fully freighted ; and for better caution for due observance hereof I do hereby prohibit any person to lay or take on board any tobacco, under any pretence whatsoever, on any vessel (other than such ship or ships as aforesaid, or such as shall belong to some inhabitant of the country,) till he or they have put in security not to offend to the contrary hereof."*

Ingle's rebellion.

The next important subject, which appears to have occupied the attention of the provincial government, at this time arose from certain plots and machinations of one Richard Ingle, now lately arrived in the province, which appear to have been now first commenced by him, with a view, as subsequent events shew, to deprive the lord Baltimore of all right to the *government*, if not

* " Council Proceedings from 1636 to 1657," p. 110.

to the *proprietaryship*, of his province. Whatever his designs now were, the provincial government had thought it fit, though perhaps improperly at this period of time, to institute the charge of "high treason to his majesty" against him; and in pursuance thereof had caused a proclamation or proclamations to be issued, for arresting his person and seizing his ship. They were of the following tenor:—

CHAPT.
IV.
1644.

"20th January, 1643.

"Proclamation against Richard Ingle.

"I do hereby require, in his majesty's name, Richard Ingle, mariner, to yield his body to Robert Ellyson sheriff of this county, before the first day of February next, to answer to such crimes of treason, as on his majesty's behalf shall be objected against him, upon his utmost peril of the law in that behalf; and I do further require all persons, that can say or disclose any matter of treason against the said Richard Ingle to inform his lordship's attorney of it at some time before the said court to the end it may be then and there prosecuted. G. BRENT."

It would appear from the following document, that he was actually arrested agreeably to the above proclamation, and that measures were thereupon immediately taken for seizing his ship.

"By the lieutenant general.—These are to publish and proclaim to all persons, as well seamen as others, that Richard Ingle, master of his ship, is arrested upon high treason to his majesty; and therefore to require all persons to be aiding and assisting to his lordship's officers in the seizing of his ship, and not to offer any resistance or contempt hereunto, nor be any otherwise aiding or assisting to the said Richard Ingle upon peril of high treason to his majesty."*

We may remark upon these proceedings, although this was only the commencement of this business, that the provincial government was undertaking in this affair a more important exercise of power than the royal authority itself in England would have ventured upon. Not long after the commencement of the civil war, and about the latter end of the year 1642, the king,

* "Council Proceedings from 1636 to 1657," p. 111.—I have ventured here to transpose the order of these two proclamations different from what they are in upon the record, where the latter, for seizing his ship, is placed before the former for arresting his person. The expressions of that for seizing his ship make mention of his being *then* arrested, and therefore could not precede that for arresting his person. The clerk, who recorded these state papers, must have misplaced them through mistake. The proclamation for seizing the ship has no date in the record.

CHAPT. injudicious as he generally was in the choice of occasions for the
 IV. strict exercise of his powers, and a little elated perhaps with his
 1644. then late successes in several battles, directed that some prisoners of war, who had been notorious in their acts of rebellion, should be indicted and tried for high treason on the statute of 25 *Edw.* 3. They were accordingly tried and condemned to death. But before their sentences were carried into execution, the parliament having notice thereof immediately issued a declaration, that "all such indictments and proceedings thereon were unjust and illegal ; and that if any man was executed or suffered hurt, for any thing he had done by their order, the like punishment should be inflicted, by death or otherwise, upon such prisoners as were, or should be, taken by their forces."—This declaration saved the lives of the condemned, the king not thinking it proper to expose his officers to the same fate.* Whether the crime of "high treason to his majesty," for which Ingle was at this time arrested, consisted in overt acts done within the province or in England, or of what nature those overt acts were, it does not appear. If the arrest was merely for treason committed in England by siding with the parliamentarians, the proceeding was certainly impolitic, if not unjust. But if the treason was committed within the province by exciting the inhabitants thereof to throw off their allegiance to the king, and to acknowledge the authority of the parliament only, it must be acknowledged to have been a justifiable struggle in the lord proprietary's friends to preserve his lordship's palatinate jurisdiction over the province, through the preservation also of the royal sovereignty. Be this as it may, however, it is said, that from this arrest captain Ingle made his escape.†

* Lord Clarendon's Hist. (fol. edit.) pp. 266, 648.—Rapin's Hist. (Tindal's edit.) vol. x. p. 135.

† Bacon's Laws, *Preface*.—This seizure of Ingle's ship, to which was added, that the government of Maryland "tampered with the seamen thereof, to carry her for Bristol, which was then in the king's hands," are mentioned in a paper, dated in 1656, (taken from Thurloe's State Papers, and inserted in Hazard's Collections, vol. i. p. 622, entitled, "Objections and Reasons, why the government of Maryland should not be put into lord Baltimore's hands,") as evidence "of the dissatisfaction and malignancy of the said lord Baltimore and his governors from time to time against the parliament and their interest."—But, if Ingle's rebellion, as it is called, was an association with Clayborne to aid and assist him in the recovery of the isle of Kent, claimed by the latter, (as it is said to have been ; see Bacon's Preface ;) it goes far to justify governor Brent in the seizure both of his person and ship, which would then in such case have amounted rather to an honest defence of lord Baltimore's property, than evidence of "malignancy against the parliament and their interest."

Cotemporary with these disturbances hostilities between the Indians and colonists still continued. What rendered this warfare now more terrible to the inhabitants was, that the Indians had by some means furnished themselves with fire arms, and had adopted the use of them. From a proclamation, issued by the governor on the second of January this year, to prohibit any person within the colony of St. Mary's from landing or delivering, upon any pretence whatsoever, any gun-powder or shot to any Indian without a license to that purpose, it is to be inferred, that some of the colonists themselves had been so wicked or incautious as to have assisted the savages with the means of this their new mode of warfare. It is equally as probable, however, if not more so, that the *Susquehanocks*, who were now the most formidable Indians, whom the Marylanders had to encounter, were in the habit of procuring fire-arms and ammunition, either immediately from the French, Dutch, or Swedes, settled on the American continent, or intermediately through the agency of the Iroquois or other Indian nations. It seems to be asserted upon good authority, that in the year 1642 the Iroquois carried on a considerable commerce with the Dutch at New Netherlands to whom they disposed of their peltry, and *who*, in return, furnished them with fire arms.* And in a pamphlet, published in the year 1648, (an extract from which is stated in Smith's History of New Jersey, and in Proud's History of Pennsylvania,†) it is said, "that the *Dutch* in New Netherland endanger all his majesty's adjoining countries, most wickedly, feloniously, and traitorously, contrary to the marine and admiral laws of all christians, selling by wholesale, guns, powder, shot and ammunition to the Indians, and instructing them in the use of our fights and arms;—likewise, the Swedes, hiring out three of their soldiers to the *Susquehanocks*, have taught them the use of our arms and fights."‡ The time of the publication of this pamphlet would probably bring the occurrence of these facts back to the present date. Some idea of the disagreeable situation, in which the frontier settlers of St. Mary's at present were, may be derived from a proclamation issued by governor Brent on the 4th of May this year; in which he "authorises the inhabitants upon Patux-

CHAPT.
IV.
1644.
Hostilities
with the
Indians.

* Holmes's Annals, vol. i. p. 325, cites Wynne, vol. i. p. 308.

† Vol. i. p. 111.

‡ The Dutch, it seems, were the first, who furnished and taught the negroes in Africa the use of fire-arms, which they used against the Europeans. *Mod. Univ. Hist.* vol. xiv. p. 36, note.

CHAPT. ent river, (being they are so far from other plantations, and so
 IV. weakly peopled, and continually exposed thereby to danger and
 1644. outrage from the Indians as well friends as enemies, by whom they received an assault to their very near cutting off one of their plantations last year, besides the eminent losses they have otherwise received,) that upon approach of any Indian whatsoever unto them in the woods, their plantations or houses, they may (after having bid the said Indian depart, and declared that if they do not depart they will shoot them,) shoot them whatsoever Indians they are; which bidding them depart I do enjoin the inhabitants unto, in case the Indians shall be of our friends, until the 25th of May next, in which time all the said Indian friends shall have notice not to approach the said plantations, and after the said 25th of May I do license the said inhabitants to shoot and kill any Indians, coming about their woods, plantations, or dwellings, without the foresaid warning given. Witness my hand.

GILES BRENT."

"The same authority I do give them against any Indians upon the water between the back river of Patuxent and the mouth of Patuxent river."*

It is probable, that in consequence of these rigid proceedings against even the friendly Indians, those of Patuxent, who had most commonly been distinguished for their amicable disposition to the "new comers" even on their first landing, entered into some compromise with the provincial government, so as to obtain some security from the dangers to which they were exposed in consequence of the foregoing proclamation. For, in about a month afterwards, a protection or "pass" under the great seal was issued by the governor, bearing date the 8th of June, 1644, declaring, "that the bearer hereof, Peter Mimascave, alias Nicoatmen, an Indian of Patuxent, and all other Indians of that town and nation are within our protection, peace and amity, to be treated and used with all humanity as our friends and confederates, until they shall give cause to the contrary; and therefore we do hereby require all and every of you, (inhabitants of the county of St. Mary's,) upon the utmost peril that may be by law inflicted upon the transgressors hereof, that you commit not any hostile act or outrage upon him the said Peter or any other of his town and nation, unless it be such as shall put you in fear of your lives by repairing to any of your houses or plantations in

* "Council Proceedings from 1636 to 1657," p. 120.

numbers lurking or other suspicious manner, without shewing or holding forth this or some other instrument or pass under our great seal, but that you suffer him and them quietly to pass and repossess to or from the houses of our lieutenant general and council or any of them, according to the full intent and effect of this our safe-conduct.”*

CHAPT.
IV.
1644.

In about ten days after the above declaration in favour of the Patuxent Indians, some proceedings took place relative to a treaty expected to be held with the Susquehanocks at the English fort or garrison at Piscattoway; which proceedings, as they are not only interesting in themselves, in giving us a better view, than we have yet had, of the affairs of the colony in relation to the several Indian tribes, friends as well as enemies, but also subsequently productive of a serious dispute between governor Brent and secretary Lewger, require to be more particularly stated here than they would otherwise merit. Although there is no express authority to say, that at the time when these proceedings took place, governor Brent was absent from the seat of government, yet from his subsequent disapprobation of them, we must presume, that at the time when Mr. Secretary Lewger issued the commission and instructions for the occasion, the governor was not at the city of St. Mary's, from whence those documents most probably emanated, so as to give the secretary an opportunity of consulting his excellency before his discharge of his official duty as secretary in issuing those government acts. It is possible, that the governor might then have been on a visit to the isle of Kent, at his manor of Kent Fort, or indeed in Virginia. But this supposition is rendered somewhat uncertain, inasmuch as there does not appear on the records any written authority for the conduct of the secretary, or indeed for the administration of the government at all, in such case of absence, as might have been expected and had heretofore been practiced.† Be this as it may, Mr. Lewger receiving information, that the Susquehanocks were expected at Piscataway, either with serious intentions of entering into a cessation of hostilities, or with

Treaty
with the
Susque-
hanocks
proposed
by Mr.
Lewger.

*“Council Proceedings from 1636 to 1657,” p. 121.

† In a preceding part of the same record book, p. 110, appears the following entry:—“7th Febr'y, 1643. The lieutenant general authorised John Lewger, secretary, to issue and sign ordinary process, and *in the absence of the lieutenant general* from St. Mary's, to hear and determine any civil cause with liberty of appeal to either party.”—This seems to imply, that about that time, (according to new style, the 17th of February, 1644,) more than four months preceding this transaction, the governor meant to be absent from the seat of government.

CHAPT. sinister designs of inveigling the friendly Indians of Piscata-
 IV. way into a confederacy with them, issued, in the name of the
 1644. lieutenant general, a commission to captain Henry Fleete, bearing date the 18th of June, 1644, of the following tenor:—

“Cecilius, &c., to captain Henry Fleete, gent., greeting.—Whereas by certain intelligence from Piscattoway I understand, that there are some number of our enemies the Susquihanowes expected about this time at Piscattoway under colour to treat and conclude a peace with them and us,* but perhaps to confederate and unite all the Indians of these parts in some general league or plot for the cutting off the English in Maryland, as they have most savagely attempted in Virginia;† and because it concerns much the honour and safety of the colony to have some English there to be present at the treaty and other proceedings, to direct and over-rule it if need be, to countenance and strengthen our friends that yet remain, and terrify the others, and to proceed with the Susquehanowe agents either in hostility or truce as there shall be most cause and reason for either; I, relying much upon your skill in the Indian language, and long conversation and experience in the Indian affairs, and your prudent and provident circumspection otherwise, have made choice of you,‡ and do hereby will and require you, all delays and excuses set apart, to take up with you a convenient strength of English, well armed and provided, to the number of twenty at least, and with them to repair to Piscattoway and there to proceed with the Indians both friends and enemies according to such instructions as shall be delivered to you by my secretary, bearing date herewith, and (during your said voyage,) to lead, order, and command in

* From this it is to be inferred, that the Susquehanocks were at this time at war not only with the Maryland colonists, but with such Indians as were friendly to them, particularly those at Piscattoway. It has been before mentioned, that the Susquehanocks were in the habit of making war upon the Yoamacoes at St. Mary's before the arrival of the first Maryland colonists. It is probable, that they had constantly kept up this warfare ever since with all the Indians seated in the peninsula between the Patuxent and Patowmack; which circumstance seems to confirm what was stated in the introductory part of this work,—that the Powhatan confederacy included the Indians between the Patuxent and Patowmack.

† This must allude to the massacre planned and in part executed by Opechananough, as before mentioned, p. 161.

‡ It will be recollected, that Captain Henry Fleete was found by governor Calvert and his colonists among the Indians at Piscataway, when the colonists first arrived in the Patowmack in the year 1634, as before mentioned, (chap. I.) and where it appeared that he had resided several years before in great esteem with the natives.

chief all the said company, as shall go along with you, by yourself, or officers, to be by you appointed in all points, and to all effects, yea even to the inflicting of death, (if necessity shall so require,) upon mutinous or disobedient persons, as a captain general may do by the discipline or law martial; and I do hereby require all inhabitants and other persons of our said province, and especially the company as shall go along with you, to respect, aid, and obey you, (as there shall be occasion,) in the quality of such chief captain and commander as aforesaid, upon peril of the utmost penalties as by martial law may be inflicted. Given at St. Mary's this 18th June, 1644.—Witness,

CHAPT.
IV.
1644.

GILES BRENT, esqr.”

“*Instructions* to captain Henry Fleete, to which his commission bearing date herewith relates.

“1. You are to go up with your company to Piscataway, and there to consider by the best means you may, what hope there is of a real and firm peace or truce with the Susquehanowes, and whether it will be more to the honour, safety, or advantage of the English to have war or truce with them at this present.

“2. If you find the most and best reasons to persuade to peace, you may enter into treaty of peace with them, and undertake to them in our name a truce or cessation of all acts of hostility on our part, until such time as you shall agree upon for expectance of performance of conditions on their parts, and of the governor's assent to a peace, and give such hostage or hostages in exchange as shall be willing to go with them, if you should find it convenient.

“The *conditions* to be demanded and stood upon by you, (so much and so long as you shall think fit,) for this cessation are to be

“1. For hostage, or such other security as you shall think best, that they shall not do any act of hostility upon us or our confederates, (such as you shall think fit to include, wherein the *Patowmacks* not to be forgotten,*) nor shall come within the territories of us or our confederates according to such bounds

* As governor Calvert, on his first arrival in the Patowmack, (1634,) and ascending the same is said to have been received in a very friendly manner by some Indians at their town called Patowmack-town, (as before mentioned, chap. I.) and that this town was on the Virginia side of that river at a place now called *New Marlborough*, we may infer, that “the Patowmacks” above mentioned were a tribe of Indians of that place, and, although resident in Virginia, were in friendship and alliance with the Maryland colony. They must have been the same tribe as those denominated the *Patowomeks* in Smith's Hist. of Virginia.

CHAPT. as you shall agree upon during this cessation, unless it be two
 IV. or three messengers repairing hither for public treaty, and carry-
 1644. ing the safe conduct under his lordship's seal, which you may
 deliver to them to that end.

"2. For satisfaction for their plundering of Mr. Angne and of Mattapanian house twice;* wherein especially to require a return of all the arms taken at those times or of other to that number.

"3. For restoring as much as you can get of the arms and other goods lost or left in our last march upon them, at least the two field pieces.†

"4. For some present to the governor, or any other conditions as you shall think fit for the honour, safety, and advantage of the colony or our confederates, and namely the Virginians.

"5. The better to endear our peace to them, you may insinuate to them, how the hostages of both sides will quickly become interpreters between us and them, and then our men will be willing to come and live among them, and to aid them against their enemies as now we do the Piscataway's, &c.

"6. If you shall not think best to treat or truce with them, you are to use all lawful and discreet means you can to pillage or take them, or (if it shall seem best) to kill them, and to break off all league and treaty between them and our confederates, and especially such as you shall note most bold and active that way, from leaguings or treating with the common enemy, afore or against our liking or consent, and the Piscataways without the authority or consent of their queen residing here.‡

* "Mattapanian house" here spoken of was most probably the same as that alluded to by *Oldmixon*, in his *Brit. Emp. in Amer.* vol. I, p. 199.—"Mattapany in this country" (St. Mary's county,) "is noted only for having been the lord Baltimore's seat, when he dwelt in this country. Here he built a handsome house, though more for convenience than magnificence; it stands near the mouth of the river Patuxent."

† From this it would appear, that our colonists had been defeated in some battle with the Indians not long before this; though no mention of such defeat or battle appears upon our records; at least, that I have been able to ascertain.

‡ The last sentence of this paragraph is a little obscure, but the meaning seems to be—that he should endeavour to hinder any league or treaty between the Susquehanocks and Piscataways without his assent or that of the *queen* of the latter tribe, who, as it would seem, was then resident at St. Mary's.—Female monarchy was common among the Indians. In *Beverly's Hist. of Virg.* p. 199, mention is made of two instances thereof then (about the year 1709,) existing on the eastern shore of Virginia, to wit, the queen of a tribe at a town called *Pungoteague*, and an empress at *Nanduye*, who, as he says, had all the nations of the eastern shore of Virginia under tribute.

“7. Lastly, in all matters of importance which shall concern the execution of your commission, or of these instructions, in matters left to your discretion; you are to advise with Thomas Gerard and James Neale, esqrs. and councillors of the province, Thomas Greene and Cuthbert Fenwick, esqrs., Thomas Baldridge, Nathaniel Pope, and John Rice, planters, or two of them, whereof the said Thomas Gerard to be one and the said James Neale to be another, if they or either of them be there to be advised with. Signed, JOHN LEWGER.”

CHAPT.
IV.
1644.

The “safe conduct under his lordship’s seal” mentioned in the first of the preceding conditions, appears to be subjoined to them on the records, as follows:—

“Cecilius, &c., to all inhabitants of the province, &c., I do hereby signify and declare unto you, that I have promised and undertaken to the Indian bearer or bearers hereof of the Susquehanough nation, not exceeding three in number and repairing in good manner from the Susquehanough fort* to any lieutenant general or some of my council at Kent or Saint Mary’s, upon any public treaty or message, safe and free passage to and fro through my province, without any molestation or harm of the English; and therefore I require all and every of you upon sight hereof not to do any thing to the violating of the said public faith given unto them, upon the utmost peril of such punishment as by martial law may be inflicted upon the contemners. Given at St. Mary’s this 18th June, 1644. Witness Giles Brent, &c.”†

Whether captain Fleete went to Piscattaway in pursuance of his commission and instructions, or whether any treaty was held or entered into with the Susquehanocks at this time, we are nowhere positively informed. The conduct of Mr. Lewger in issuing this commission and these instructions, (if we suppose the absence of the governor,) seems to us at this day liable to no imputation of extraordinary impropriety. Some slight excess of his powers, we might suppose, would have been overlooked on such an occasion, had not some circumstances attended the transaction, which enhanced its impropriety, but of which circumstances we have no information. It is with surprise, there-

Disagree-
ment of
governor
Brent
thereto.

* It is probable, that the fort at Susquehanah here mentioned was the fortification erected on Palmer’s island at the mouth of the Susquehanah, in pursuance of the orders before stated, p. 259, dated April 18th, 1643.

† These documents relative to this contemplated treaty at Piscattaway are in “Council Proceedings from 1636 to 1657,” p. 121-125.

CHAPT.
IV.
1644.

fore, that we learn, that in about two months afterwards governor Brent appears to have entertained the highest indignation at this assumption of power by Mr. Lewger.—It is thus expressed on the records:—"Whereas John Lewger, esq., one of his lordship's council of this province of Maryland, hath, without any order or authority derived from his lordship the lord proprietary or his lieutenant general, presumed of his own hand to counterfeit and deliver unto captain Henry Fleete a commission for treating a peace with the enemies of this province the Susquehanowes, and likewise for the making the said Fleete a captain or general to make war against them or other Indians, and to exercise authority over his company—inhabitants of this province, and to do other acts according to the tenor of the said commission; unto which said commission he hath likewise presumed to affix and counterfeit his lordship's great seal and his lieutenant's hand, which acts being of high misdemeanor and offence, and such as require severe animadversion; These are, therefore, to suspend the said John Lewger from the said office and dignity of councillor, and from all other offices and dignities thereupon depending; and I do further hereby revoke all other commissions at any time granted unto him the said John Lewger by me, as his lordship's lieutenant general, for granting out writs, or exercising any other power of judicature within his lordship's province.

GILES BRENT."

"Declared by the lieutenant general the 26th of August, 1644."

On the same day a commission appears to have issued to "William Brainthwayte, esqr., commander of our county of St. Mary's, Thomas Greene, gent., and Cuthbert Fenwick, gent.," appointing them "commissioners for our county of St. Mary's, to hear and determine all civil causes, and likewise all criminal causes, not extending to life or member, arising or pleadable by the law of this province before the commander and commissioners of a county."—Which commission we may suppose to have been issued principally for the purpose of substituting others in the place of Mr. Lewger in a new commission for the justices of the county court.*

Governor
Calvert re-
turns from
England

These differences between governor Brent and Mr. Lewger appear to have been quickly absorbed in more important transactions, and we learn no more of them. In about a week or two

* See these proceedings of the 26th of August, in "Council Proceedings from 1636 to 1657," p. 125-6.

afterwards Mr. Leonard Calvert returned from England to his station of governor of Maryland. He brought with him new commissions from the lord proprietary in England for the administration of the government of his province, one for himself as governor or lieutenant general, another for the appointment of his council, and a third for Mr. Lewger re-appointing him secretary of the province, judge of all causes testamentary and matrimonial, attorney general, and register of the land office, besides that of councillor, he being included in that commission also. This re-appointment of Mr. Lewger must have been made in England by the lord proprietary previous to his knowledge of the supposed misconduct, for which he was now suspended; but we shall see him again, after the storm of Clayborne's attack on the province had blown over, in the exercise of his former office of secretary, as we may suppose, in virtue of this last commission.—The commission for the governor purports to have been—"Given under the great seal of the province at the fort of St. Mary's on the eighteenth day of September, 1644." But, as before observed on the former commission, it must have been drawn up in England, under the immediate inspection of the lord proprietary, and, according to his lordship's command inserted in the body of it, "proclaimed and published within the province at the places accustomed to proclaim and publish any his edicts and ordinances;" to which proclamation or publication the last mentioned date must refer. As this commission contained an express revocation of all preceding commissions to any lieutenant general, and those for the council and secretary superseded former commissions also for those offices, it became necessary for them to be proclaimed and published as speedily as might be after the governor's arrival. Hence we may infer, that his return into the province must have been between the 26th of August and the 18th of September following. His new commission was in form the same as that in 1642, and nearly so in substance. A few of the most important variances between them may be remarked here, as they seem to indicate the opinions of the lord proprietary, and perhaps those of the statesmen of that day on whose judgment he might have reposed, as to his legislative powers over his province. In the clause of the former commission of 1642, where he authorised his lieutenant general to call assemblies of the freemen of the province for the enacting of laws and to give his assent to such as should be en-

CHAPT.
IV.
1644.
with new
commis-
sions.

Some few
variances
between
the new
commis-
sion and
the former.

CHAPT. acted by them, a proviso was inserted, that "every law so to be
 IV. assented unto by him the said lieutenant should be in force till
 1644. we or our heirs should signify our or their disassent thereunto under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs and due consideration had thereupon we or our heirs shall think fit to confirm the same under our or their hand and seal."*—The meaning of which, though a little obscurely expressed, seems to be, that the lord proprietary should reserve to himself the right of abrogating at any time any act of assembly by his express "disassent" thereto, notwithstanding his lieutenant general in the province had previously given his assent to it, unless his lordship should give his express *confirmation* of such law under his hand and seal; after which, it would seem, that the law would be binding on himself.—In the similar clause or paragraph of the present commission of 1644, now newly arrived, the proviso contained greater restrictions on the lieutenant, as to the laws to which he was authorised to give his assent.—"Provided, that every one of the said laws so to be enacted and assented unto in our name be made to continue in force till we or our heirs shall signify our disassent thereto, under our or their hand and seal, and *not to continue in force only for any other limited time*, as till the next ensuing general assembly thereafter the making thereof, or for any certain number of years, as divers laws heretofore have been made there, which causes a great deal of uncertainty and produces many ill effects in the government there; Provided also, that our said lieutenant do not in our name enact or assent unto *any law for the constitution, confirmation, alteration or change of any officer* or officers within the said province, or which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions over or in the said province granted unto us and our heirs by the letters patent above mentioned; every which law, so to be assented unto, and enacted by him our said lieutenant general there in our name, and consented unto and approved of by the said freemen or their deputies or the major part of them in such manner as aforesaid we do hereby declare shall be in force within the said province until we or our heirs signifying our or their disassent thereunto under our or their hand and seal and no longer, unless after the transmission thereof

* See the clause more at large in the commission of 1642, before referred to and inserted in note (LJ.) at the end of this volume.

unto us or our heirs and due consideration had thereupon we or our heirs shall think fit to confirm the same under our or their hand and seal."—By these restrictions the governor seems to have been prohibited from assenting to any act of assembly, which was made to continue only for a limited time, as *until the next session*, or for any certain *number of years* expressed therein. This artifice in legislation, so much practised in modern days by the free and independent states of America, we perceive, was not unknown in the early periods of colonization. It results from the principle of "checks and balances" so highly prized in the legislative powers of government as arranged in the several constitutions of America and borrowed from that of England. Each distinct body of men, vested with the powers of legislation, is fond to gratify the natural passion of the human heart and to retain power to its latest breath. The contests between the senate and house of delegates of the state of Maryland for the retention of power and control in permitting the longer existence or continuance of a law, have in a variety of instances operated most perniciously on the happiness, as well as prosperity of the people. When a law was *temporary*, and the time of its expiration arrived, either body had a power by its negative to withhold its assent for its longer continuance; but if its duration was indefinite, both must consent to its *repeal*. It was, without doubt, to guard against this inconvenient "check" upon the lord proprietary, resorted to by our provincial legislature, that his lordship so strenuously opposed this mode of legislation. If the lieutenant general of the province, through the means of the proprietary influence, or his own, should fortunately obtain the passage of a law favourable to the interest of the proprietary, and the law was *permanent*, that is, without limitation, the assembly could never afterwards obtain its repeal without the assent of the governor or lord proprietary; but if the act was *temporary* and made to continue only for a definite time, the assembly could, at the expiration of that time, refuse its assent to its further continuance, and the law would cease to exist. It is probable also, that the provincial legislature had passed some law or laws, which his lordship thought, had affected his "rights, prerogatives, and royal jurisdictions" over his province, particularly in the *creation or alteration of offices*. If the principles of the English parliamentarians had been by this time even partially imported into the province, as we may justly suppose

CHAPT. they were, his lordship had much cause indeed of apprehension
 IV. on this ground; for, the long parliament had now assumed en-
 1644. tirely to themselves, the right, not only of creating offices, but
 of appointing officers to fill them in all cases. It is not proba-
 ble, that, in the spirit of the times, the prerogative rights of a
 lesser baron, such as lord Baltimore, would be more regarded
 than those of the king. In justice to the provincial legislature,
 however, it ought to be observed, that by the law of England,
 the *creation of offices* could be done only by a statute enacted for
 the purpose, or at least that the king could not create any new
 office with any new *fees* annexed to it, or annex new fees to an
 old office; for that, it was held, would be imposing a tax upon the
 people without consent of parliament; though the *appointment*
of officers to fill offices already created, most certainly appertain-
 ed to the king, and such properly, it might be said, ought to
 have been the law of Maryland. But lord Baltimore's charter
 went beyond the English constitution in this respect; for, by
 the seventh section of that instrument, power was given to him
 "to constitute and ordain judges, justices, magistrates, and offi-
 cers, of what kind, for what cause, and with what power soever,
 within that land" (Maryland) "and the sea of those parts, and in
 such form as to the said now baron of Baltimore, or his heirs,
 shall seem most fitting." It must be acknowledged, that this
 was a very extensive power, and might very justly create a wish
 in the provincial legislature to impose some limits to it. That
 they should have had the power of giving or withholding their
 assent to the "constitution" or creation of an office was reason-
 able, had the charter so allowed; but if they presumed to "alter
 or change," not *offices*, but *officers*, they certainly gave to the
 lord proprietary just cause of complaint.

Another important variance between the commission of 1642
 and the present one, consisted in a clause therein containing
 additional instructions to the lieutenant general relative to grants
 of lands. By this clause one of the *conditions* previous to ob-
 taining a *grant* of land, was, "to take the oath of fidelity to the
 lord proprietor;" which condition does not appear to have been
 ever before prescribed, and became subsequently one of the os-
 tensible causes of much contest and bloodshed in the province.

The new commission for the *council*, concomitant with the
 foregoing for the lieutenant general, was almost literally the
 same as the former of 1642, (to which the record refers,) except

in the names of the gentlemen who were now appointed to form the governor's council. They were—"Giles Brent, John Lewger, Thomas Greene, Thomas Gerard, and James Neale, esqrs." Colonel Francis Trafford, Thomas Cornwaleys, William Blount, and John Langford, esqrs., who, together with Mr. Lewger, formed the former council under the former commission, either had left the province or were omitted in the new appointment for some cause not now known.

CHAPT.
IV.
1644.

Mr. Lewger's commission also, constituting and appointing him to the several offices of secretary of the province, judge of causes testamentary, attorney general, and register of the land office, appears to be nearly the same as his former commission of 1642. As he subsequently appears again in the execution of his office of secretary, we may suppose that Mr. Brent's accusation against him was not deemed by governor Calvert to be very well founded, or that Mr. Lewger was a man of that utility to the lord proprietary, that his services at this critical period of the provincial affairs could not be dispensed with.*

Governor Calvert, it appears, had not much time to repose himself at St. Mary's, after his voyage across the Atlantic. Some causes, possibly approaching symptoms of the rebellion to the lord Baltimore's authority over his province, which shortly succeeded, obliged him to be absent from his government, most probably on a visit to Virginia. But it does not appear, that he was at this time constrained to fly to Virginia from hostilities carried on within the province, for they had not commenced; but his visit there might have been with intentions, either to come to some *eclaircissement* with Clayborne or to apply to the government of Virginia, which was still opposed to the parliamentarians, for its interference in behalf of his province. In contemplation, most probably, of this visit to Virginia, on the thirtieth of September, "by virtue of his commission," he "nominated and deputed his well beloved cousin William Brainthwayte, esq., to be lieutenant general, admiral, chancellor, keeper of the great seal, chief captain, magistrate, and *commander of the said province* during his absence." From which last expression we may infer, that his absence from St. Mary's was not occasioned by a visit to the isle of Kent, that being *within the province*.†

Perturbed
state of the
colony.

* These commissions are inserted at large in note (LIV.) at the end of this volume.

† "Council Proceedings from 1636 to 1657," p. 133.

CHAPT.

IV.

1644.

In the mean time further measures were taken to guard against the hostilities of the Indians, by proclamation, (dated the 13th of November, 1644,) "prohibiting any inhabitant of the province from lending, selling, or bartering any arms or ammunition whatsoever unto any Indians within this province, without leave first had from the governor of the province for the time being; and to authorise any inhabitant of this province, who shall meet with any Indian within this province, (without the said license,) having with him ammunition, to take the same from him, and to deliver the same to the governor for the time being; and likewise to prohibit all the said inhabitants of this province to entertain or receive into their houses, (without the aforesaid license,) any Indians whatsoever.*"

Attempt to
call an as-
sembly.

Governor Calvert could not have been absent from the seat of government above ten days or a fortnight; for, on the sixteenth of November, (1644,) pressed perhaps by the difficulties of his situation and the perilous state of the province, he issued his proclamation at St. Mary's, for holding a general assembly, and summoning all freemen inhabiting within the province to be at the said assembly, either by themselves, or their proxies or burghesses, to consult and advise, &c. at St. Mary's, on Tuesday, the 3d of December following. The secretary was also thereby authorised, (in case of the governor's absence from St. Mary's on the said 3d of December,) to prorogue it to such further day as he should think fit. Duplicates of this proclamation were issued to St. Clement's hundred, and to St. Michael's, as also to the isle of Kent. Special writs also, as heretofore used on similar occasions, issued to Thomas Gerard, James Neale, Thomas Greene, Giles Brent, and William Braithwayte, esqrs., to attend in person; the four first of whom were also of the council, as before stated. What was the result thereof we are not informed; for, no record appears of their meeting, proceedings, or prorogation in pursuance of the above mentioned authority.†

Clayborne
repossesses
himself
of the isle
of Kent.

Our documents now fail us for the remainder of the present year, except a commission with certain "instructions in writing given by the governor to two officers and a party of men sent by him to visit the isle of Kent, and which, from the order in which they are placed on the records, though without any date

* "Council Proceedings from 1636 to 1657," p. 138.

† See "Assembly Proceedings from 1637 to 1658," p. 305; and Bacon's Laws, *sub anno* 1644.

annexed to them, appear to have taken place at some time between the middle of November of this year, (1644,) and the first of January next succeeding. The commission was to Mark Pheypo and John Genalles,* “authorizing them to take the command of eight men and a shallop, and to press to fill up that number, and to employ them in service at the isle of Kent according to instructions.” The “instructions” annexed to this commission were:—

“1. You are, with all the speed you may, to repair with your company to the isle of Kent, and if wind and weather permit, after you are past Patuxent river, to make over for the east side of the bay, and to keep that side to Popler’s island, in such secret manner as you may, to keep your shallop from being discerned at Kent.

“2. At Popler’s island to stay until night, discovering aforehand if any vessel be riding against the southern part of Kent, and if there be any thereabouts, or in any other part, to keep out of command of all vessels, and to make for some plantation further up the island where you shall have reason to think it will be fitted to put ashore both for safety and intelligence, and not to go on shore at Kent point or thereabouts, until you have had information of the state of the island from some weaker plantation as afore.†

“3. To inquire whether captain Clayborne, or any other, have made any disturbance of the peace, or committed any outrage upon the island, and to learn what force he did it with, and what strength he is of there at sea or shore, and what his intents further be, and how long he means to stay.

† In the margin of the record book, opposite to this commission, it is thus inserted,—“*Vacat P. Aliam* to Mark Pheypo and John Genalles.” Whether this means, that the commission was directed to both *jointly* or to either *conditionally*, or that this commission had been *vacated* by another subsequent commission, is not easy to determine.

* There is inserted in the record book, in the margin opposite to this *second* article of the instructions, the following entry, which appears to have been intended as a part of the instructions, though not easily intelligible:—“*Vacant P. Alias*, to go upon the west shore over against *Comin’s* plantation 4 *Ande’a*. to hollow at house and surprise some one and bring him away.”—It may be remarked, that Kent fort was situated on the southern part of the island at or near to the first harbour or creek on the left hand in going up what is called the Eastern bay after passing Kent point also on the left. From the caution given to avoid this part of the island, it may be inferred, that captain Clayborne or his party were, at the time of these instructions, in possession of that fort.

CHAPT. "4. To deliver my letter to C. Brent,* and bring an answer
IV. if you may."†

1644.

As somewhat explanatory of the foregoing commission and instructions, may be here inserted also a short memorandum immediately succeeding them in the record book, as follows:—

"January 1st. Proclamation to be published upon the isle of Kent to prohibit trade, till ships have been at St. Mary's, &c., and to declare captain William Clayborne, esqr., and Richard Thompson, planter, to be enemies of the province, and to prohibit all intelligence or correspondence with them or agents at peril, &c. &c. as per file."

On the same day, January 1st, a commission appears to have issued to captain William Brainthwayte, esqr., "to be commander of Kent with all authority civil and criminal, which heretofore to any commander hath belonged, and in absence to depute such person as he shall think fit, and John Wyat, Robert Vaughan, gent., John Abbott, William Cox, commissioners."‡

We thus see, that Mr. Clayborne had now renewed his claim to the isle of Kent, and had again resorted to open military force. He had, without doubt, been induced to embrace this period of time for that purpose from the promising prospect of success, which the declining state of the royal power in England, and consequently that of the lord Baltimore and the Catholic party, now held out to him. After the unfortunate battle on Marston Moor, near York in England, (which had occurred on the second of July last, 1644,) whereby the whole of the north of England was won from the king, the friends of the parliament began to assume a bolder tone, and to consider the king's cause as in a gradual progress to destruction.§ The estates of those, who took part with the king, (as lord Baltimore appears to have done

* Although it is written in the record "C. Brent," as above, yet as Mr. Giles Brent was owner of the "manor of Kent fort," and possibly now resident there or some where on the island; it is probable that the letter C. may have been erroneously written instead of the letter G., and the message to have been directed to him; or it may have been meant to designate his title,—*Captain* Brent.

† "Council Proceedings from 1636 to 1657," p. 139.

‡ "Council Proceedings from 1636 to 1657," p. 140.—By "commissioners" was meant justices of the peace. In such times of suspicion, governor Calvert might have fixed upon Mr. Brainthwayte as commander, on account of his being a relative of the *Calvert* family, as appears from other documents.

§ The *independent* party, headed by Oliver Cromwell, began now (towards the end of the year 1644,) to separate from the Presbyterians, and Oliver began to form those designs, which he afterwards so successfully executed. Lord *Clarendon's* Hist. (fol. edit.) p. 421.

in the early part of the civil war,*) were considered by them as liable to confiscation or sequestration, wherever the fortune of war should enable them to do so;†—too often the ungenerous conduct of successful revolutionists or rebels, as the case may eventuate, in most civil wars towards the conquered party, even towards innocent persons who know not how to act on such occasions. Whether Mr. Clayborne had been in England, and had taken a part on the side of the parliament, or whether he had not been for some years a constant resident in Virginia, and had now availed himself of some discontents within the province of Maryland, originating perhaps with Puritans who had been permitted to settle in the province, we have no information. We have seen him before, immediately on the dissolution of the old charters of Virginia and the change thereof from a proprietary to a royal government, placed in the conspicuous stations of councillor and secretary of that province. He had also, in the year 1642, experienced the king's favour in appointing him to the office of "king's treasurer within the dominion of Virginia *during his life*."‡ We may therefore consider him as having been for some years past an inhabitant of Virginia, agreeably to the duties of his office, but now, for interested purposes he had forsaken his king and benefactor, and arranged himself under the banners of the parliament. It is not impossible, but that he acted also under the ordinance of parliament, of November, 1643, before stated,§ whereby the superintendence of the colonies was vested in the earl of Warwick with a council of five peers and twelve commoners, who were authorised "to nominate, appoint, and constitute all such subordinate governors, councillors, commanders, officers and agents, as they shall judge *to be best affected*, and most fit and serviceable for the said plantations, and to remove others."—Interest has a powerful bias upon the affections, and they might therefore with confidence count upon Mr. Clayborne as their faithful servant. In his efforts to regain his possession of the isle of Kent, success seems to have attended him, and moreover, indeed, his party appear for a while to have

CHAPT.
IV.
1645.

* See the allegation before stated, (p. 265,) of his joining the king at Oxford and Bristol.

† See the Ordinances of March, 1643, before stated, p. 264.

‡ This appointment is inserted in Hazard's Collections, vol. i. p. 493, as extracted from Rymer, vol. xx. p. 541, A. D. 1642;—as follows:—"Rex, sexto die Aprilis, concedit *Willielmo Claiborne* Armigers, Officium Thesaurarii Regis in fra Dominium de *Virginia* durante vita. P. S."

§ See before, p. 264.

CHAPT. been so victorious as to have possessed themselves also of the
 IV. government of the colony at St. Mary's, to which he had never,
 1645. as yet, set up any pretence of claim. It is probable, however, that captain Richard Ingle, who had been arrested at St. Mary's for treason, as before stated, but had escaped, and who, it is said, associated himself on this occasion with Mr. Clayborne,* acting under some higher authority, perhaps under a commission from the earl of Warwick's board of commissioners just mentioned, returned to St. Mary's, full fraught with revenge, and driving Mr. Calvert from his station, who fled to Virginia, placed himself in the seat of power. But the minutia of these transactions, or proceedings, which took place during what is called Ingle's and Clayborne's rebellion, are now covered in obscurity. At the close of their power, and the restoration of the authority of lord Baltimore, towards the end of the year 1646, they carried with them or destroyed, on their departure from St. Mary's, most of the records and public papers of the province.† A slight recognition, however, still remains of the holding a session of assembly at St. Mary's on the 11th of February, 1644, (1645, N. S.) prior to Ingle's or Clayborne's possession of that part of the province; but no journal of the proceedings of that session appears, nor how nor when summoned for that purpose. It may, perhaps, be supposed, for nothing is to be found contradictory to it, that this session was held in virtue of a prorogation or adjournment of the assembly called in the preceding November, as before mentioned. Be that as it may, one law only appears to have been enacted; if more, they are now lost. It is entitled, "an act for the defence of the province," and appears to have been made for the purpose of enabling the governor "to settle a garrison at Piscattoway," and to lay an assessment upon the inhabitants of the province to defray, not only the charge of such garrison, but that "of the late expedition to Kent;" from which last expression we are to infer, that an "expedition" or attempt had been made before this session, to subdue the rebellion in the isle of Kent, besides that of the exploring party under Mark Pheypo or John Genalles, before mentioned, but which proved unsuccessful.‡

* Bacon's Preface to his Collection of the Laws of Maryland.

† "Assembly Proceedings from 1637 to 1658," p. 425, and Bacon's Preface, note (d.)

‡ As this act, "for the defence of the province," exhibits the impoverished state of the province at this time, and the scanty means it possessed for supporting a military force, it is inserted at large at the end of this volume in note (LV.)

Connected with this a singular proceeding appears to have been adopted by the governor or executive branch of the provincial government for the support of the garrison at Piscattoway ; which, although it occurred nearly a month prior to this session in February, ought not to be passed unnoticed. A commission was issued by the governor, bearing date, January 9th, 1644, directed "to Thomas Weston of St. George's Hundred," authorizing him to assemble all the freemen of that hundred for the purpose of assessing upon that hundred only the charge of a soldier, who had been sent by that hundred to serve in the garrison at Piscattoway.*

CHAPT.
IV.
1645.

Although the curiosity of every native citizen of the state of Maryland, might perhaps be excited to know something of the little civil war, which now prevailed in his native province at this early period of its existence, in the commotions of which some worthy ancestor of his might perhaps have borne an anxious part ; yet the loss of the records before mentioned, one of the consequences thereof, has rendered all authentic documents relative thereto for ever irrecoverable ; and it appears, that the muse of history has not thought the subject of sufficient importance to inspire the pen of any cotemporary historian.

* " Council Proceedings from 1636 to 1657," p. 141.

CHAPTER V.

Captain Hill elected governor, in the absence of governor Calvert—Governor Calvert returns to St. Mary's with a small army—Hill resigns upon terms—Governor Calvert convenes the assembly before called by Hill—The first instance on the records of the province of the distinction between the upper and lower houses of assembly—Proceedings of the assembly—An embargo and martial law proclaimed—The "acts for customs" on imports and exports enforced—The English ordinance of 1646-7, relative to customs on goods exported to the plantations, and the first English excise law—The isle of Kent submits, and the government thereof is settled—Governor Calvert's death and character—Thomas Greene, esqr., his successor—Mr. Hill renews his claims upon the province—Corn (private property,) *pressed*, or seized, for the use of the garrison of St. Inigoe's fort—War with the Indians of Nanticoke and Wicomico—Cautious proceedings to regulate the return of the disaffected—The exportation of corn and horses prohibited—The administratrix of Governor Calvert adjudged to be his lordship's *attorney in fact*, as governor Calvert had been—An assembly called—They meet—Their proceedings—Proclamation of a general pardon—The provincial court adjourned, and proclamation thereof made—Affairs of England having relation to Maryland—Governor Greene removed and governor Stone appointed in his stead—Strictures on his commission—A new oath prescribed to the governor—A new commission of the council—Mr. Hatton sent in as secretary—A new great seal—Office of muster-master general instituted—A new commission also for the commander of the isle of Kent—Sixteen laws sent in, with a commission for propounding them to the assembly—New conditions of plantation—Quarrel between governor Greene and the commander of the isle of Kent—Question, as to the right of forfeitures for treason, accruing within a manor—Affairs of the mother country in relation to Maryland—Session of assembly—Remarks on the acts of this session—The act concerning religion—The letter of the assembly to the lord proprietary—His lordship's reply—The first settlement of the Puritans at Providence, now Annapolis—New conditions of plantation, and grants of land—Mr. Greene appointed governor in the absence of governor Stone—Charles, the second, proclaimed king—Governor Stone returns, and convenes the assembly—Their proceedings—The acts of this session—The governor visits Providence, and organizes it into a county called Ann Arundel—The commanders of the isle of Kent and Ann Arundel authorised to grant warrants for land therein—King Charles the second, appoints a new governor of Maryland—The appointment of Mr. Gibbons, of New England, to be one of the council—An assembly called—The ordinance of parliament of 1650—The colony at Providence refuses to send delegates to the assembly—His lordship's message on this subject—Sir William Berkeley's attempt to fix a settlement on Palmer's island—Lord Baltimore's directions for remedying the loss of the records—and for civilizing the Indians—New directions for settling the province—Mr. Mitchell removed from the council—A law against the spreading of false news, proposed by his lordship—Proceedings in England for the "reducement" of the colonines—In-

structions to commissioners for the reducement of Virginia—The commissioners sail on their expedition—Captain Curtis arrives in Virginia, which is reduced—He, with the other commissioners, proceeds to Maryland, which submits.

After a lapse of about eighteen months, during which period our provincial records afford no trace of any of the intermediate transactions, we find governor Calvert in Virginia; whither, without doubt, he had retreated from the hostilities of the parliamentary party within his province headed by Ingle, and perhaps Clayborne.

CHAP. V.

1646.

Captain Hill elected governor in the absence of governor Calvert.

A commission, it seems, was issued, during this absence of governor Calvert, to captain Edward Hill, "deputing and appointing him governor of the province of Maryland;" which, from the tenor and conclusion of it, to wit, "Given under my hand and seal this 30th day of July, 1646, in *Virginia*.—Leonard Calvert,"—purported to have been the governor's "own act;" but, from subsequent circumstances it appears, that the grant of this commission to Mr. Hill was "acted by another person," (as the record expresses it,) that is, was made out by the council at St. Mary's who elected the said captain Hill to the office of governor, in the absence of governor Calvert, while he was "in *Virginia*."

The preamble to this commission to Mr. Hill thus states the authority, on which governor Calvert was enabled in such a case to create a deputy in his office of governor.—"Whereas by a commission from the right honourable Cecilius lord proprietary of the province of Maryland to me Leonard Calvert, esqr., bearing date the 18th of September, 1644, I am authorised, *in case of my absence out of the said province*, to appoint such an able person as I shall think fit to be his lordship's governor of his said vince, and whereas at this present I have occasion, for his lordship's service, *to be absent out of the said province*, I do depute and appoint captain Edward Hill to be governor of the said province;"—"And I do further authorise the said captain Edward Hill to take and receive into his possession and custody, for his lordship's use and his heirs, all stocks of cattle, rents of lands, profits of customs, escheats, fines, forfeitures and confiscations, by any way and at any time due unto his lordship within his said province of Maryland, and the one half thereof, (excepting of stocks of cattle,) I do hereby authorise the said captain Edward Hill, (as a reward for his service to his said lordship,) to apply to his proper use and benefit during the time of his government

CHAP. V. of the said province, and also for all stocks of cattle belonging to his lordship there, to be accomptable to me for his lordship's use and his heirs, whenever I shall demand the same, and until his lordship shall otherwise appoint."^{*} Whether this commission was the governor's "own act," or not, yet it seems to intimate, that his restoration to the office of governor was considered, at this time, as a doubtful incident, and that the best mode of securing the private property of lord Baltimore within the province was to delegate his powers of government to some friend, in whom he might confide, and who either then resided, or would be allowed to reside, at St. Mary's. But, it appears from a clause in one of captain Hill's letters hereafter inserted, that some members of the council, still remaining at St. Mary's, thought they could with propriety, in the absence of governor Calvert, elect and appoint captain Hill to be governor, and did so, under the plea of an "absolute necessity for the safety of the province," and, as it would seem, under the last clause of his lordship's commission for the government before referred to, which provided, that "in case our said lieutenant shall happen to die, or *be absent out of our said province*, and shall fail to make choice of, nominate, and appoint some person to be our lieutenant, &c., we do hereby grant unto our councillors there for the time being, or the greater part of them, full power and authority from time to time in every such case to nominate, elect, and appoint such an able person, *which shall then be of our council there*, and inhabiting and residing within our said province, &c., to be our lieutenant," &c.[†] Whether Hill was, previous to this election and appointment, an inhabitant or resident within the province of Maryland, some doubt may be entertained from the tenor of his letters hereafter stated; but, it seems certain, that he was not "one of the council," and, therefore, could not be legally elected or appointed governor under the above clause. This subject will be resumed in its proper place.

The lord proprietary, in England, seems to have been fully informed in due time by his brother of the situation of his affairs in Maryland, or at least of the necessity, which his brother had been under of quitting his province. Considering, perhaps, the proprietaryship of his province as lost to him, but desirous and expecting to retain what private property he had in America,

^{*} "Council Proceedings from 1636 to 1657," p. 142.

[†] See governor Calvert's commission of 1644, before referred to in p. 286, and inserted in note (LIV.)

particularly such rents and debts as were due to him, he executed and sent a warrant of attorney "to his brother Leonard Calvert, esqr., and to his trusty and well beloved John Lewger, esqr., his secretary for his province, and to whom they two should appoint, to demand and receive, and, if need be, to sue for, implead, and recover, for his use, all rents, arrears of rents, profits, debts, and other dues whatsoever, which belonged unto him, either in Virginia or Maryland, and to dispose thereof as he should from time to time direct; and in default of such directions according to their best discretions for his most advantage; and to give acquittance in his name and behalf for what they should receive from time to time by virtue of this warrant. Given under his hand and seal at *Stook*, this 15th of November, *anno domini*, 1646."*

CHAP. V.
1646.

The place called *Stook*, from whence his lordship dates this power of attorney, was most probably some obscure place in England, to which he had retired; for, at this time no royalist, especially a Catholic, could openly appear in any part of England, if he had been known at any time to have taken side with the king. It may be remembered, that the last intelligence we had of his lordship's residence, was at the city of Bristol, after it had been stormed and captured by the king's forces in July, 1643, and from whence he dated his instructions before mentioned of the 18th of November, 1643; but that city had since been surrendered to the parliament forces, in September, 1645; and we may suppose his lordship to have been, in consequence thereof, under the necessity of seeking some other asylum. The decisive battle of *Naseby* had been fought, in June, 1645, where the king's forces had been entirely routed. Sir Thomas Fairfax had now made a complete conquest of the two loyal counties in the West Devonshire and Cornwall, and had driven the prince of Wales to take refuge in France. The king had given himself up to the Scotch army, and the venerable marquis of Worcester, above eighty years of age, had the honour of surrendering, in July, of the present year, the last remaining fortress of royalty in Great Britain—his castle of *Ragland* in Monmouthshire. Whether lord Baltimore had now also submitted to the parliament, and taken the covenant-oath, or lurked unknown in some obscure place, as above suggested, we have no documents to authorise us in determining.

* "Council Proceedings from 1636 to 1657," p. 143.

CHAP. V.

1646.
Governor
Calvert re-
turns to St.
Mary's
with a
small
army.

Governor Calvert, it seems, did not retreat into Virginia with an intention of passively resigning his government to the insurgents of his province. As sir William Berkeley, the governor of Virginia, had found means to retain that province in the obedience of the king, and held out against the parliamentarians long after the mother country had submitted to them, governor Calvert was enabled, in his retreat to that colony, to organise a military force sufficient to regain that part of his province, which was at and contiguous to St. Mary's. Towards the close of this year, therefore, he returned to St. Mary's with a body of "soldiers" or armed men, but to what number we are not informed. With this little army he seems to have taken the rebels by surprise;* and, after some little military skirmish, for, it appears that some blood was shed, most of them submitted, some were arrested and imprisoned, and some fled to Virginia. From an expression in governor Greene's letter to Sir William Berkeley hereafter stated, to wit, "I would not willingly this colony should be further imbrued in the effusion of blood,"—it is to be inferred, that there must have been some *battle* or fighting between the inhabitants of the province on the occasion of this insurrection; but, whether such fighting was previous to governor Calvert's quitting his province, or when he returned to regain possession of it, we are no where certainly informed. We have ventured to suppose, that it was on his return.

Hill re-
signs upon
terms.

Mr. Hill, the pretended governor, was, on "this invasion," as he calls it, of governor Calvert, obliged to give up his office; but, this was done, as it would appear, upon "conditions mutually subscribed to by them;" which conditions were, as may be inferred from Hill's letters,—a payment of or compensation for all arrears of perquisites granted to him by the before mentioned commission in the name of governor Calvert. Mr. Hill appears upon this to have retired to Virginia, where we shall leave him for the present.

Governor
Calvert
convenes
the assem-
bly before
called by
Hill.

An assembly of the province, it seems, had, during the government of Mr. Hill, been called by him, had met, and had passed some laws, (not now extant,) but had been adjourned before governor Calvert regained the government. Mr. Calvert, probably supposing that no "new summons to the inhabitants," or proclamation for that purpose, were necessary, convened the

* See the letter of the assembly, of April 21st, 1649, to the lord proprietary hereafter inserted.

same assembly again, which so stood adjourned without issuing any "new summons" or proclamation; which circumstance is here mentioned, principally on account of its giving rise to subsequent objections, as will hereafter be seen, to the validity or legality of the acts passed at this session; inasmuch as the assembly could not be lawfully called by Mr. Hill, who was not lawfully a governor. It seems also extraordinary and unaccountable to us at this day, how governor Calvert could have reposed confidence enough in the same assembly, called by captain Hill, to have induced him to trust the same members with the legislation of the province; especially, if the circumstance be true, as stated by a subsequent assembly of 1649, in their letter to the lord proprietary, that this "whole house of commons," as they call this assembly of 1646-7, "(two or three only excepted,) consisted of that rebelled party and governor Calvert's professed enemies." However ill or well disposed this assembly might have been towards lord Baltimore's government, they were reassembled and met again under the authority of governor Calvert, on the 29th of December, 1646, O. S., which was, according to the computation of the rest of Europe, now new style, the 8th or 9th of January, 1647.

It is peculiarly remarkable, that, notwithstanding the turbulence of the times, it is at this session of assembly, we discern the *first notice*, taken on the records, of the distinction, which was subsequently adopted and used, between the *upper* and *lower* houses of assembly, and the form practised of sending for the *lower* house to attend the governor in the *upper*, to hear his speech to them, in the manner of an English legislative body.—It is thus entered on the journal.—"In the upper house present, the governor, Mr. Lewger, Mr. Greene.—The burgesses being sent for and all appearing, the governor declares to them, that they were called hither as freemen to treat and advise in assembly touching all matters, as freely and boldly, without any awe or fear, and with the same liberty, as at any assembly they might have done heretofore, and that they were now free from all restraint of their persons, and should be free during the assembly, saving only to himself, after the end of the assembly, such charge as he had or hath against any for any crime committed since the last general pardon."*

CHAP. V.
1646.

The first instance on the records of the province, of a distinction between the *upper* and *lower* houses of Assembly.
1647.

* It may be proper to state, that although the fact of sending for the burgesses to come to the *upper house*, leaves the inference, that the assembly was at this

CHAP. V. Immediately after this speech of the governor and on the same day, a singular proceeding appears to have taken place in the assembly, relative to the terms on which the "soldiers," who attended the governor from Virginia, had embarked with him for the purpose of reinstating him in his province. Several persons were sworn as witnesses, who "testified, that the governor, afore their coming up out of Virginia, declared to all the soldiers in public, and to these deponents in particular, in these words or to this effect:—that they were to attend him upon these terms, viz. that if he found the inhabitants of St. Mary's had accepted his pardon for their former rebellion, and were in obedience to his lordship, *the soldiers were to expect no pillage there*, but he would receive the inhabitants in peace, and only take aid from them to the reducement of Kent."—This does not necessarily imply, that governor Calvert's soldiers were to be allowed to "pillage" and plunder the inhabitants in rebellion, as they pleased. It might mean only, that the property of the rebels, being enemies, captured in war, should be divided and distributed among the soldiers. But, even in a literal sense of "pillage," the warfare of the most civilized nations in Europe, at this period of time, particularly throughout the war, called the thirty years war, from 1618 to 1648, was constantly attended with a license to the soldiery to plunder; and during the civil war of England, in consequence of this general usage, scarcely a city or a fortress was surrendered by either party, but plunder and pillage were practised by the conquerors.*—It does not appear, however, from any documents extant, that governor Calvert's soldiers committed any "pillage" upon the rebels on their regaining the province; but, on the contrary, seem to have expected their compensation out of his lordship's private property.

The house or houses of assembly continued to sit and adjourn from day to day until the second of January, when it finally adjourned to the first of March following; but no meeting of this assembly appears to have taken place in pursuance of this last adjournment. Only two acts are mentioned to have been passed

session divided into two houses or branches, and actually set in two distinct apartments, yet no express mention thereof appears on the records of this session.

* When the town of Colchester in Essex was surrendered, after long resistance by the nobility and gentry, who had defended it for the king, in the year 1648, the barbarous generals *Fairfax* and *Ireton*, particularly the latter who dictated, exacted ten thousand pounds from the innocent inhabitants, *to preserve them from plunder*. Rapin's Hist. of Eng. (Tindal's edit.) vol. x. p. 477.—See our remarks on this subject before, p. 164-5, note.

at this session: One entitled, "an act for customs," and another entitled, "an act touching judicature." But, as no copies of these acts are now extant, we have to suppose, that the former, relative to customs, was similar to some acts before made on the same subject, and before stated, to wit, the 13th section of the act of 1638-9, ch. 2, and the 36th bill of the same session, entitled, "an act for a custom on certain tobaccoes," which gave five per cent. to the lord proprietary on all tobaccoes exported, except to England, Ireland or Virginia. But, from the preamble to a subsequent act—1661, ch. 6, made expressly to repeal this act of 1646-7, relative to customs, it appears to have contained an additional clause, (not in the former acts,) wherein his lordship, "in consideration of the custom therein granted to him, *undertook the whole charge of the government, both in war and peace.*"—The other act, relative to judicature, might possibly be similar to the former act of 1642, ch. 4, entitled, "an act for the rule of judicature," before stated, but from a subsequent act of 1650, ch. 6, it appears to have related also to the regulation of sheriff's fees.*

The next proceeding of the provincial government, which occurs after this session, was an embargo:—dictated as the proclamation purports, by the civil commotions of the province, and the continued hostile state of the isle of Kent. As the proclamation for this measure cannot well be condensed into a much shorter space and the material passages thereof be preserved, it is here presented entire to the reader.—"By his lordship's lieutenant and governor of Maryland.—Upon certain reasons known unto myself requiring an embargo to be laid at this present upon all persons and vessels, to the end no intelligence may be communicated, or practice entertained with foreigners *during this time of war*, I do hereby forbid all persons now being in the

An embargo, and martial law proclaimed

* See these acts, under their several dates, stated in *Bacon's Laws*; but, although Mr. Bacon has said, in a note to the titles which he gives to the acts passed at this session of 1646-7, that "no other traces of the acts or proceedings of this session appear upon record, that he could discover," yet he must have meant, that no copies of these, or any other acts, of this session, appear upon record, or he must have inadvertently, (contrary to his usual accuracy,) passed over what is stated above of the *proceedings* of this session, taken from the record book in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 307.—We shall see also, that, at the next session of assembly held in January, 1647-8, a protest was entered by the assembly against the validity of the acts of this session, "conceiving that they were not lawfully enacted, for that no summons issued out to the inhabitants, whereby their appearance was required by lawful authority."

CHAP. V. county of St. Mary's, that they presume not to go, or attempt
 1647. to go, out of the county of St. Mary's without acquainting me first therewith, and my leave so to do; and that no person entertain any communication, or give any entertainment to any one coming into the province or from the isle of Kent; but that, immediately after the knowledge of any arrival of any person or vessel coming into the county of St. Mary's, they give notice thereof to me as soon as may be, and warn all persons so arriving to come to the fort to me before they entertain any communications with any person of the province. This proclamation to be in force in every hundred immediately after the publishing thereof in the hundred, and to continue in force for one month from the date of it, and all men after the publication to take notice of it and observe it in every point so far as it shall concern them, upon pain of death or such other censures as the offence shall deserve, in the judgment of a *martial court*; assuring all persons, that I intend to take a very strict accompt of all offences to the contrary hereof.—Given at St. Inigoe's Fort, this 16th of January, 1646.”*

The act for
 customs on
 imports
 and ex-
 ports en-
 forced.

At or about the time of issuing this proclamation, a vessel belonging to Mr. Ralph Beane arrived within the hundred of St. Clement's or New-town, in St. Mary's county, from Virginia, laden with wine and other spirituous liquors, and Mr. Beane had sold some of those liquors to the inhabitants of those hundreds, who came on board of his vessel for that purpose according to the then usual practice. This appears to have been contrary to the before mentioned act of the last session, entitled, “an act for customs,” which it seems must have laid a duty as well upon *imports* as *exports*. The governor, therefore, issued his commission, bearing date the 19th of January, 1646, (1647, N. S.) to Mr. William Britton to make inquiry into this business, and, if

* See this proclamation in the record book entitled, “Council Proceedings from 1636 to 1657,” p. 145: where a note is subjoined thereto as follows:—“Renewed for one month on the 12th of February, 1646, especially prohibiting export of cattle or corn.”—St. Inigoe's fort appears to have been situated about three or four miles to the south eastward from the site of the city of St. Mary's, (probably where St. Inigoe's ware house now stands,) and being then the most secure fortress on that part of the province, the governor had fixed his residence there, and had there held the last assembly. This part of the province appears to have been kept in subjection at this time by military power, for the purpose of supporting a due administration of the laws and government of the lord proprietary. The “exercise of martial law, in case of rebellion, sudden tumult, or sedition,” was authorised by the thirteenth section of lord Baltimore's charter.

he found the facts stated to be true, he was commanded "to seize and bring to St. Inigoe's fort all wines and hot waters imported by the said Ralph Beane or any other."—The commission further directed;—"and you are to require the said Ralph Beane and all other persons intending to freight any tobaccoes out of the province upon the said vessel, that he or they do either come to the fort to discharge or secure the custom, or else that they bring the said vessel under command of the fort, and there lade their tobaccoes, upon peril of forfeiting all tobaccoes, which shall be laden otherwise, *as attempted to be exported afore the custom discharged or secured.*"*—The latter customs, here referred to, on *exports*, appear to have been conformable to the several acts of assembly just before mentioned. But, it must be acknowledged, that the custom upon *imports*, if now exacted by the provincial government upon other goods and merchandize than "wine and hot waters," must have borne particularly hard upon the colonists, who were the consumers, more especially if the same goods or merchandize so imported had paid a custom or excise in England before their exportation thence, and moreover a custom in Virginia also, from whence, as it seems, the goods referred to in this commission were last imported.

This leads us to the notice of an ordinance, passed by the English parliament, about this time, (on the 23d of January, 1646, O. S.) relative to the customs and duties on goods and merchandize exported from England to "the several plantations of *Virginia*, *Bermudas*, and *Barbadoes*; which ordinance, although Maryland is not expressly mentioned therein, may nevertheless be supposed to have extended to this colony also; especially as the preamble thereof refers to "other places of America" besides the plantations just mentioned, and the subject matter of the ordinance applied as well to Maryland as Virginia. It may be remarked also, by way of confirmation of this construction, that the parliament and their partisans in America affected to consider Maryland, at this time and for some years after, only as a part of Virginia, and consequently included in that general term.† The ordinance enacted, "that all merchandize, goods, and necessities, which shall be for the supportation, use, and expense for the several places in *Virginia*, *Bermudas*, *Barbadoes*, shall and may be exported from this kingdom, without paying

CHAP. V.
1647.

The English ordinance of 1646-7, relative to customs, &c., and the first English excise law.

* "Council Proceedings from 1636 to 1657," p. 146.

† See the several state papers, relative to Maryland, inserted in Hazard's Collections, vol. 1, p. 620-630.

CHAP. V. any custom, subsidie, taxation, or other imposition, or duty for
 1647. the same, the duty of *excise* excepted,* during the space of three years next ensuing." A proviso is inserted in the next or second section of this ordinance, which seems more properly to apply to the first and preceding one; as follows:—"Provided, that none of the said plantations permit any vessel to take in any goods of the growth of the said plantations *from any of their ports*, and carry them to any foreign parts, *except in English bottoms.*" The house of commons had before this, in the year 1642, (1643, N. S.) through special favour to "the plantations in New England," they being "now likely to prove very happy for the propagation of the gospel in those parts," (*similis simili gaudet*,) made an ordinance or resolve, "that all goods exported out of England into New England, or from thence imported hither," (that is, into England,) "shall be free from paying any custom, subsidy, taxation, or other duty; either inward or outward, *either in this kingdom or New England.*"† A respectable annalist, on the British colonies in America, observes that these ordinances are "remarkable, as well for asserting over the plantations the parliamentary right of internal taxation, as for establishing in part what was afterwards extended and executed by the famous act of navigation."‡ It may be observed, however, that the first section of this ordinance of 1646 seems to have been intended only as a *regulation of the trade* between England and her colonies, and to imply only a right in the parliament to impose a custom or tax upon goods exported from England to the colonies, which custom or tax, upon goods and necessaries for the colonies, unless it had been suspended by this ordinance, (upon the condition expressed in the proviso, that is, that the colonies would *export* their tobaccos in *English bottoms* only,) would have been collected by the officers of the customs *in England* before exportation. The ordinances of

* The parliament had before this made an ordinance, bearing date the 22d of July, 1643, whereby a duty, which they called an *excise*, was laid upon certain goods therein mentioned; one particular of which it may be proper to mention: "Every pound of tobacco, not of the English plantation, was to pay, over and above all customs, 4s. and that of *English plantation*, 2s." See Rapin's Hist. Eng. (Tindal's edit.) vol. 10, p. 253.—"This was the first time," says lord Clarendon, (Hist. fol. edit. p. 385,) "that ever the name of payment of *excise* was heard of or practised in England; laid on by those who pretended to be most jealous of any exaction upon the people."

† Hutchinson's Hist. of Massachusetts, vol. 1, p. 110.

‡ Chalmers's Annals, p. 176.

1642, in favour of New England, it must be acknowledged, recognized, by strong inference, a right in the parliament to impose "taxation" to be collected *in* New England. The independence of the colonies, now United States, has rendered this question a subject more of curiosity than utility. But the second section of this ordinance, of 1646, seems to have some bearing upon the great and important dispute, which has for some years subsisted between the United States and Great Britain, relative to the *expatriation* of British subjects. This section ordains, "that it shall be lawful for any persons, subjects of this kingdom, to transport from hence unto the said plantations such persons as, being fit to advance the trade, shall be willing to be employed in the several plantations: provided the names of them be registered in the custom house books, and also that certificate be returned from the governor of such plantation, within one year, of the arrival of the said persons there."* The parliament, in making this ordinance, appear to have been clearly of opinion, that they had the right and power of imposing *restrictions* on the emigration or voluntary transportation of English subjects to the colonies. If they could impose restrictions in such case, they could totally prohibit. If they could prohibit English subjects from emigrating out of the kingdom, even to their own colonies, they could, *a fortiori*, prohibit them from emigrating to foreign countries or other independent states. These observations are here made only to exhibit the sense of the times upon this subject.

As soon as the winter season was over, as it appears, governor Calvert proceeded to reduce the isle of Kent to the obedience of the lord proprietary; and he seems to have accomplished it some time in April of this year. We have no documents, on this occasion, whereby we might amuse the reader with details of battles, of deeds of personal valour, or of acts of individual honour and generosity. The conquest of the isle of Kent was probably not attended with such brilliant and interesting circumstances. The inhabitants thereof are said to have "submitted themselves again to his lordship's government;" but whether without any resistance we are not informed. The governor went in person to take possession of the island, and, after the inhabitants had taken the oath of fealty to lord Baltimore, he granted his pardon, bearing date April 16th, 1647, to the seve-

The isle of Kent submits, and the government thereof is settled.

* See this ordinance at large in note (LVI.) at the end of this volume.

CHAP. V. ral inhabitants therein named, "of and for all crimes of rebellion,
 1647. or other offences whatsoever, committed within the province at any time before."* He then proceeded to settle the civil as well as military government of the island, and for that purpose issued a commission, on the 18th of April, whereby he appointed Robert Vaughan, gent., to be chief captain and commander under him (the governor) "of all the militia of the isle of Kent, and with it to command and execute whatsoever shall be by him thought requisite for the defence of the said island against all intestine mutinies or seditions, that shall happen within the said island, and against all invasion of any foreign enemies whatsoever." He also "authorised him to constitute and ordain under him all such officers for military service as he should think requisite, and inflict such punishment upon all offenders under his command against martial discipline, as the nature of the offence shall deserve, according to the law martial; provided that where the offence shall deserve the forfeiture of either life or member, that such offender for his trial be referred, and judgment, to the *provincial court* to be held by his lordship's *governor and council* of this province."† He further authorised "the said captain Robert Vaughan to award all process necessary, according to the law and custom of this province, for or concerning all actions civil and criminal within the said isle of Kent; and he authorised the said captain Robert Vaughan, William Cox, Thomas Bradnox, Edward Comins, Philip Conner, and Francis Brooke, gent., or the major part of them, whereof the said Robert Vaughan to be always one, to hear, try, and judge, according to the laws of this province, all actions and causes civil, which shall happen between

* "Council Proceedings from 1636 to 1657," p. 150. The names of those, who were pardoned, and who, therefore, had been engaged in resistance to lord Baltimore's authority, with others who had fled, are thus stated in the preamble:—"Whereas the inhabitants of the isle of Kent, Thomas Bradnox, Edward Comins, John Metham, Thomas Belt, Robert Short, Francis Lumhard, John Ayres, Zachary Wade, Richard Cotesford, Edward Lannin, and Walter Joanes, have taken the oath of fealty to the lord Baltimore, and submitted themselves again to his lordship's government," &c.

* This is additional confirmation of what has been before observed, relative to the origin of the *provincial court*; to wit, that lord Baltimore, in virtue of the seventh section of his charter, which authorised him to erect courts of justice, and to appoint judges thereof, had, in all his commissions to his governor and council, given them the supreme judiciary power within the province; and, as they thereby became the *supreme court* of the *province*, courtesy and common parlance bestowed on them the name of the "provincial court," and this without any formal enactment thereof by the provincial legislature, but by force of his lordship's commissions.

party and party within the said * * * *,† and to award execu-
tion upon the same, except where the freehold of any one shall
come in question, provided that it shall be lawful for any man,
at any time before execution served, to appeal from the said
judgment unto the *provincial court* of this province, the appel-
lant first putting in sufficient security to the court, from whence
the appeal is made, for treble damages to be satisfied to the ad-
verse party in the cause, in case he be cast in the provincial
court in the said cause; and he further authorised the said cap-
tain Vaughan and his associates before mentioned, or the major
part of them, whereof the said captain Robert Vaughan to be
always one, to hear and judge, according to the laws of this
province, all crimes and offences committed within the said
island, and to cause such sentence, as shall be given by them
therein, to be executed, excepting where the life or member of
any one person shall come in question.”‡ This arrangement for
the administration of justice in the isle of Kent seems to have
been similar to what had been before practised in the latter end
of the year 1642,§ when that island appears to have been first
considered as a *county* distinct from that of St. Mary's, and not
a *hundred* appertaining to it, as it formerly was by the bill enti-
tled, “an act for the government of the isle of Kent,” passed at
the session of 1638-9. The appellate jurisdiction of the pro-
vincial court, traced out by this commission, seems also to have
been nearly the same as that which continued to be practised
from county courts during the existence of the provincial go-
vernment.

Before the governor left the island, he issued, on the 20th of
April, another commission “to captain Robert Vaughan and the
rest of the commissioners of the isle of Kent,” (viz: those gen-
tlemen just before mentioned in the preceding commission,) re-
quiring them “to cause all such lands, goods and chattels, as
were belonging unto any of the late rebels on the island of Kent,
and who had fled from thence, or who were remaining in the
said island and had refused to take the oath of fealty to his
lordship, to be attached and kept in safe custody by some officer
to be appointed by them, until every of the said persons respec-
tively should appear before the governor and the council of this

† This blank is so in the record, but the words,—“isle of Kent”—seem to be
evidently those omitted.

‡ “Council Proceedings from 1636 to 1657,” p. 148.

§ See before, p. 247.

CHAP. V. province at St. Mary's, to answer their several crimes of rebellion and refusal of the said oath, and abide judgment of court therein." After his return to St. Mary's, he issued a proclamation, on the 8th of May, much to the same purport of that of the 16th of January preceding, prohibiting the departure of any person out of the province without leave, or the entertainment of, or holding communication with, any stranger, until they had first been at the fort of St. Inigoes.* These proceedings were rigid, but perhaps dictated by necessity or self-defence. In further arrangement of the affairs of the isle of Kent, he authorised captain Vaughan, by commission dated the 31st of May, "to collect, demand, and receive, for the use of the lord proprietary, all customs, confiscations, forfeitures, and escheats by any means, and at any time due to his said lordship upon the said island;" and also, at the same time, by two other distinct commissions to Mr. Francis Brooke, he was required to take into his custody "all neat cattle belonging to his lordship on the said island," and particularly "all the estate of John Abbott, late of the said island."†

Governor
Calvert's
death, and
character.

These were the last acts of governor Leonard Calvert, which we have upon record; for, in a few days afterwards, on the ninth of June, he died.—Of the private character of this gentleman we are not enabled to speak with any certainty, nothing relative to him but in his public capacity being transmitted to posterity. If a faithful performance of the various trusts reposed in him by his brother in the government of an infant colony can imply honesty and integrity of character, he seems to be fully entitled to it; and, if we may credit the eulogy passed upon him in the two last commissions for the government, he appears also to have given in his public character general satisfaction to the colonists. From the scanty materials of the preceding part of our history we have, it is true, been authorized in noticing, particularly at the September session of 1642, some symptoms of discontent with his conduct on the particular occasions there mentioned; but it would be improper to censure him too hastily under the imperfect information we have at this day of those transactions. We see, therefore, no just reason to withhold

* This proclamation does not appear at large among the records, but the substance of it, as above, is recited in that of governor *Green's*, hereafter stated.

† These "neat cattle" we may suppose to have been part of the confiscated property of rebels on the island, as also of the estate of John Abbott.

from him the commendation bestowed on him in the above mentioned commissions, wherein, it is said, he manifested in the discharge of his office of governor of the province, "such wisdom, fidelity, industry, and other virtues, as rendered him capable and worthy of the trust reposed in him." CHAP. V.
1647.

An inconvenience, which would otherwise have resulted to the lord proprietary's interest in his province upon the death of governor Calvert, was fortunately prevented, for a time at least, by his verbal nomination of Mr. Thomas Greene, as his successor, in virtue of a special power vested in him for that purpose by his lordship's commission. This fact is best stated in the words of the entry on the record. Thomas
Greene,
esq., his
successor.

"June 10th, 1647.—Whereas by commission from the right honorable Cecilius lord proprietary of the province of Maryland to the late governor Leonard Calvert, esqr., bearing date the 18th of September, 1644, at his lordship's fort at St. Mary's in the said province, he the said Leonard Calvert was authorized, in case he should happen to die or be absent from time to time out of the said province, to nominate, elect, and appoint such an able person, inhabiting and residing within our said province, as he in his discretion shall make choice of and think fit, to be governor of the said province; These are, therefore, to publish and declare to all persons, whom it may concern, that the said Leonard Calvert did, by word of mouth, on the ninth day of June, 1647, (lying upon his death bed, yet in perfect memory,) nominate and appoint Thomas Green, esqr., one of the council of this province, to be governor of the same, with all the same authority and power of government as he the said Leonard Calvert was authorised by his lordship's commission to confer upon him, as by the oaths of Mrs. Margaret Brent and Mary Brent,* Francis Anketill, and James Linsey, (who were all then present with him at the same time,) is averred to be true.—*Teste me,*
WILLIAM BRETTON, Clk."†

Although Mr. Hill had, upon the restoration of governor Calvert, retired to Virginia, as before mentioned; yet, not receiving, as it would seem, the stipulated compensation for his salary Mr. Hill
renews his
claims
upon the
province.

* These ladies were the sisters of Mr. Giles Brent, whom we have frequently had occasion to mention before. The Brent family were probably connected with that of lord Baltimore by either blood or marriage; and it appears, that Mrs. Margaret Brent now became the administratrix of Mr. Leonard Calvert's estate. *Kilty's Landholder's Assist.* p. 104.

† "Council Proceedings from 1636 to 1657," p. 152.

CHAP. V. while governor, so soon as he expected, he applied to Sir Wil-
 1647. liam Berkeley, then governor of Virginia, to intercede with governor Calvert in his behalf. Sir William accordingly wrote a letter to governor Calvert on the subject, but which letter, dated on the 12th of June this year, did not consequently arrive at St. Mary's before the death of Mr. Calvert. It appears to have been sent by Mr. Hill, together with a letter of his own on the same subject, to general Calvert, without a knowledge perhaps of his death; which letter of his own bears date on the 18th of June, from a place called *Chicocoan*, situated, as we apprehend, on the Virginian side, or south bank, of the Patowmack; where some settlers had probably fixed themselves, and to which place he had repaired for greater convenience in making his demands, if not for annoying the government of Maryland.* His claim for a compensation for his salary might, perhaps, have some foundation in justice; but his pretensions to the office of governor of the province, which he seems to have deemed paramount even to that of governor Calvert, are obviously founded on the most frivolous reasons. His threat of regaining possession of the government, "by some strange overture," which he afterwards explains to mean "a parliamentary influence," though he professed at the same time to act in behalf of lord Baltimore, bespeaks a mysterious duplicity incompatible with the character of a man of honour. Mr. Green, as governor, returned to Sir William Berkeley a very proper answer to his letter; informing him of the death of governor Calvert; assuring him, that neither governor Calvert nor himself ever had any intentions of withholding from Mr. Hill any claim whatever, which was justly due to him; and requesting him "to take some effectual course, that captain Hill might not by his evil designs and practices proceed to disturb his majesty's the king's peace here," (in Maryland,) "of whose unjust and wicked design of invading this province by the way of Chicacoan and Appamatuck with some other forces to be drawn out of other parts of Virginia he had credi-

* There is a river called *Coan*-river in Northumberland county in Virginia, emptying into the Patowmack, nearly opposite to St. Mary's river in Maryland. This seems, most probably, to be the place from whence Mr. Hill dated his letters. *Appamattox*, another place mentioned in his letters, might have been the same as *Mattox* creek in Westmoreland county, higher up the Patowmack, on the Virginia side. From a proclamation, which will be presently stated, it appears, that many of those, who were concerned in the rebellion against lord Baltimore's authority, had, on the return of governor Calvert, fled to these places in Virginia, where some Virginians had previously settled, or they themselves commenced settlements there.

ble information by others, and, of late, expressions of his own sent under his own hand from Chicacoan to that purpose.”* CHAP. V.
1647.
Our documents furnish us with nothing more of these extraordinary pretensions of Mr. Hill; and Mr. Green appears to have proceeded quietly in the discharge of his duties as governor of the province.

Among the first of his proceedings one appears, which, as it exhibits the distressed state of the colony at this time, as well as an extraordinary exercise of executive power, ought not to be passed unnoticed. Captain John Price,—captain of the fort of St. Inigoe’s, having informed the governor, that there was a great want of corn in the fort, and having requested him to take some speedy course to supply the said want, “it was ordered by the governor, that all such corn as should be in any one’s possession within the province, more than for his own and his family’s proper use, should be *pressed*, at the rate of 120 lb. tobacco per barrel, being at this time the common rate within the province, upon his lordship’s account and for the maintenance of the said fort.” Accordingly on the next day, (June 18th,) a commission issued to sergeant Mark Pheypo, “to take up and press, upon his lordship’s account, for the use and maintenance of the fort of St. Inigoe’s, five barrels of corn belonging to Cuthbert Fenwick, gent., and deliver it to captain John Price, captain of the said fort.”† This proceeding must have been grounded either on the ancient royal prerogative of *purveyance*, whereby *provisions* for the royal household might be seized and paid for at the common rate or price; or on the prerogative of *pressing* ships, carts, waggons, and *provisions* in time of war; both which prerogatives had hitherto been deemed legal in England, and the lord Baltimore’s palatinate *regalia* might have been supposed to have given him the same rights.‡ The situation of the province at this time, on the brink of destruction through the

* As the correspondence between Sir William Berkeley, Mr. Green, and Mr. Hill, contains the facts above stated, and the reader’s curiosity might be gratified in the perusal of them, they are inserted entire at the end of this volume in note (LVII.)

† “Corn Proceedings from 1636 to 1657,” p. 154.

‡ It will be recollected, that the prerogative of *purveyance* was not abolished until the restoration, by the statute of 12 Car. 2, ch. 24, together with feudal tenures; and, at this very time, the parliament were exercising the arbitrary power of *pressing* even *soldiers* for the service in Ireland; as appears from the petition of the army, dated June 4th, 1647; stated in *Rapin’s Hist. Eng.* (Tindal’s) edit. vol. X. p. 380.

CHAP. V. consequences of civil war, which had nearly produced a famine, and at the same time harassed by the hostilities of the savages, seems to afford ample excuse for this small stretch of power, especially as it was then deemed to be within the pale of the law.

War with the Indians of Nanticoke and Wicomico. That the Indians of the province were now also unremitting in their warfare upon the colonists, appears from a commission issued within a few weeks after the above transaction, (on the 4th of July,) to captain John Price. The preamble thereof states, that "the inhabitants of this province have sustained divers great losses in their estates by the Indians of *Nanticoke* and *Wicomico*, enemies of this province, who making incursions *here* have assailed and set upon divers of the inhabitants of this province,* and have committed divers insolencies, rapines, murders, and other barbarous cruelties, *by the way of trade*,† and that divers overtures of peace had been made to them; but notwithstanding they still persist in their wicked and barbarous intentions toward us." The commission then authorises him,—“to take thirty or forty such able men as he shall think fit and make choice of for that purpose, with sufficient arms, provision, and ammunition, and them to embark in such vessel or vessels as he the said captain John Price shall think fit and convenient, and with the said men to go over unto the towns and plantations of the Indians of *Nanticoke* and *Wicomico* aforesaid, lying to the eastward of this province, and then and there to employ his utmost endeavour, skill, and force, by what means he may, in destroying the said nations, as well by land as by water, either by killing them, taking them prisoners, burning their houses, destroying their corn, or by any other means as in his best discretion he shall judge convenient.”‡ Whether this expedition un-

* The Indians of “*Wicomico*,” here mentioned, certainly mean those who inhabited on or near the *Wicomico* river in Somerset county, who, in conjunction with those of *Nanticoke* in Dorchester, were then in the habit of crossing the bay and assailing the inhabitants of St. Mary’s. The expression—“making incursions *here*,”—evidently refers to St. Mary’s, and it does not appear, that any population by the colonists had as yet taken place any where on the eastern shore, except on the isle of Kent.

† We may suppose, that this means, that the Indians of *Nanticoke* and *Wicomico* visited St. Mary’s county, under the pretence of trading with the colonists, but in reality to plunder them.

‡ “Council Proceedings from 1636 to 1657,” p. 161.—This commission further required captain Price, “that he make no distribution or division of any plunder or pillage whatsoever, which shall be gained or taken by any soldier or soldiers during the said voyage from any the aforesaid Indians, until he shall arrive at St. Inigoe’s fort, and there given a just account of all such plunder or pil-

der this commission took place or not, or if so, what were the incidents of it, we are no where informed. Captain Price appears to have been relied upon, at this time, as a man of some experience in military affairs; and, for his fidelity to the lord proprietary, during Ingle's rebellion, was subsequently, in 1648, created "muster master general" of the province; in which commission his "abilities in martial affairs" are highly commended by his lordship.

From some proceedings of the governor and council, which occurred about this time, we are authorised in inferring, that many of the Maryland colonists, who had been engaged in the late rebellion against the lord proprietary, had, on the "invasion" or return of governor Calvert, fled out of the province, and taken refuge at the before mentioned places on the Virginian side of the Patowmack—called *Chicacoan* and *Appamat-tucks*; from whence they frequently returned to St. Mary's in an armed, though probably clandestine, manner. To prevent this, it was thought proper to make the following order.—"September 15th, 1647.—It is this day ordered by the governor, that this oath following be administered to all persons that have had any hand in the late rebellion here, whenever they shall come into the province, and that the captain or commander present of the fort* is hereby authorised and required to administer the said oath to all such persons coming in as aforesaid; And further, the said captain or commander shall take into his possession and keep in safe custody within the fort all such arms and ammunition as any of them shall bring with them at their coming into the province, and see them safe delivered unto them again when they shall depart the said province, and this as often as any of them shall come or go from hence."

CHAP. V.
1647.
Cautious
proceed-
ings to re-
gulate the
return of
the disaf-
fected.

The oath prescribed in the above order was in substance nearly as follows:—

"You shall be true and faithful, (so long as you shall remain in this province, and as often as you shall return into the same,) to the right honourable the lord proprietary of this province and his

lage."—This privilege of plundering the Indians seems to have been mentioned in almost all the early commissions of the province for making war upon them. See what has been said upon this subject herein before, p. 289.

* The fort, here alluded to, seems to have been St. Inigoe's, where governor Calvert, on his return, and governor Green as his successor, kept their head quarters. St. Inigoe's fort must have been a different one from that of St. Mary's or St. John's, both of which last mentioned forts we have seen before frequently referred to in the proceedings of the province.

CHAP. V. heirs, and to his governor for the time being; and all conspira-
 1647. cies and practices, as you shall know or hear of, against them or any of them, you shall resist to your power, and reveal the same to them or some person in authority under them within twenty-four hours; and you shall not use any means or persuasions directly or indirectly to draw any of the inhabitants of this colony to forsake the governor.”

To give publicity to the foregoing order and to enforce the same, a proclamation was issued, on the same day, of the following tenor:—

“By the lieutenant general.—Whereas divers of the inhabitants of Appamatucks and Chickacoan have several suits depending in this next court, and that justice may be duly administered to them and to all other persons, without danger of disturbance of the peace and welfare of this province; these are to give notice to all persons, that had any hand in the late rebellious action of this province, that they neither may nor shall have any hearing in court, or be admitted within this province, before such time as they have taken oath of fealty unto the lord proprietary and his governor for the time being, during the time they remain within the province; and that the said oath shall not be understood by them only for this present, but shall firmly bind them in futurity, so often as they shall have occasion to come into the province; and that at any time when they come into the province they shall deliver all such arms and ammunition, as they bring with them, unto the commander of the fort, which shall be restored to them when they depart the province; and that the proclamation set forth, the 8th of May last, by the late governor Leonard Calvert, esqr., touching the departure of any person out of the province without leave, the entertainment of any stranger or holding communication with them, until they have first been at the fort of St. Inigoe’s, shall stand in full force and virtue until Christmas day next; further, these are straitly to prohibit and forbid all persons of this province whatsoever to give any entertainment to, or admit into their houses, any of the persons aforesaid, without first shewing a certificate from my hand or the captain or commander of the fort present there, that they have there taken oath of fealty to his lordship; upon pain of such severe censure as the court shall adjudge such an attempt to deserve. Given at the fort of St. Inigoe’s, the 15th September, 1647.

THOMAS GREENE.”*

* “Council Proceedings from 1636 to 1657,” p. 163-4.

Although the foregoing order, or ordinance, and proclamation CHAP. V.
1647. thereupon, would be now deemed inconsistent with the principles not only of American but of English liberty, as being repugnant to that clause in *magna charta*, whereby “no freeman was to be disseized of his liberties, or be outlawed, or exiled, or condemned, but *by lawful judgment of his peers or by law of the land*;” yet, agreeably to those unfortunate maxims, which the princes of the house of *Stuart* had adopted, whereby the monarchy of the realm was supposed to possess the power of supplying the necessity of laws by proclamations, a clause had been inserted in lord Baltimore’s charter, (the eighth section,) enabling him, or his magistrates and officers, to make *ordinances* from time to time, to be observed within the province, “as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same.” The justification of this investment of power in his lordship is stated by way of preamble to the clause, to have been, “that in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates or deputies, can be called together for the framing of laws.” It must be confessed, that, however dangerous such powers may generally be, if vested in the executive branch of a government, yet, considering the situation of the province at this time, a case could scarcely occur, where the necessity of assuming and exercising such extraordinary powers could be more urgent than the present; if it be allowed, that it was justifiable at all to maintain the lord Baltimore’s authority over, and possession of, the province. To have called a general assembly of the freeholders, (and every freeholder in the province was entitled to a seat therein,) divided and distracted as they must have been at this time by their late provincial civil war, would have been highly impolitic, if not dangerous to the peace of the community, as well as to lord Baltimore’s rights; besides, the unavoidable delay of legislative proceedings might have admitted the mischief before the means of prevention could have operated. Governor Greene, therefore, appears to have acted correctly on the occasion.

In the same point of view we are to consider another proclamation issued by him in a month or two afterwards, (November 10th,) to prohibit the exportation of corn and horses out of the The exportation of corn and horses prohibited.

CHAP. V. province. The season of the year had now arrived, when the
 1647. quantity of Indian corn made in the province could with tolerable exactness be ascertained, and exportation of it usually occurred. The attention of the inhabitants had been, in the preceding part of the year, so occupied with their unhappy civil dissensions, as to occasion a neglect of their crops. An apprehension of a scarcity of this necessary article of food seems to have been, therefore, a natural consequence, and dictated a prohibition of its exportation, especially if it was true, as stated therein by the governor, that "there was no great likelihood of any considerable supply thereof to come in from abroad." The stock of horses within the province he states also to have been "as yet very small." The transportation of these, as well as the exportation of corn, was therefore prohibited by this proclamation, "upon pain of such severe punishment as shall be thought fit by the *provincial court*." Over such offences, it may be supposed, that this supreme court of the province considered, that they had lawful jurisdiction and might punish by legal discretionary fine, as and for a misdemeanor at common law in the breach of a lawful ordinance.*

The administratrix of governor Calvert adjudged to be his lordship's attorney in fact, as governor Calvert had been.

On the same day, (November 10th,) or about the same time, a proceeding of the *provincial court* took place, which, although it be apparently of a private nature, yet, being materially connected with the affairs of the provincial government, cannot properly be omitted. It is most proper to state it in the words of the record.—"This day† the question was moved in court, whether or no, Mr. Leonard Calvert remaining his lordship's sole attorney‡ within this province before his death, and then dying, the said Mr. Calvert's administrator was to be received for his lordship's attorney within this province, until such time as his lordship had made a new substitution, or that some other remaining upon the present commission were arrived into the province. The governor demanding Mr. Brent's opinion§ upon the same *quare*, he answered, that he "did conceive that the administrator ought to be looked upon as attorney, both for recovering of rights

* "Council Proceedings from 1636 to 1657," p. 165.

† No date is affixed to the record of the proceeding; but the expression above may be presumed to allude to the date of the preceding document, to wit, that of the preceding proclamation, the 10th of November.

‡ This certainly meant his lordship's attorney in fact as to his private affairs, and not his attorney general of the province, a public officer.

§ Mr. Giles Brent was then the oldest councillor, being the first named in the last commission of the council, of 1644.

into the estate, and paying of due debts out of the estate, and taking care of the estate's preservation, but not further, until his lordship shall substitute some other as aforesaid; and thereupon the governor conceived, and it was ordered, that the administrator of Mr. Leonard Calvert aforesaid should be received as his lordship's attorney to the intents above said."*

CHAP. V.
1647.

Although the word "administrator" is used in the preceding document, yet, it is most probable, that agreeably to the phraseology of those times, such word might have been in common use as applicable to a female as to a male person, to whom letters of administration on the estate of one deceased might have been granted; and, as Mrs. Margaret Brent appears to have been unquestionably the *administratrix* of the estate of governor Leonard Calvert,† the preceding order of the provincial court appears to have been a judicial determination, that Mrs. Margaret Brent might lawfully act as the *attorney in fact* of lord Baltimore as to his private estate within the province. There appears, however, at this day, some indelicacy in resting such a question upon the decision of Mr. Giles Brent, who was a brother to Mrs. Margaret Brent, a single lady; and, in connection with this circumstance, it is proper to mention here, that lord Baltimore subsequently expressed great displeasure either with her conduct as to his estate or at her appointment agreeably to this decision, or at both, as will be seen hereafter. This lady, (*Miss Brent*, in modern phraseology,) appears to have possessed a masculine understanding; and she is stated, by a writer much conversant in the land records of Maryland,‡ "to have been very actively employed in taking up lands, and in affairs of all kinds relating to property."

Towards the close of the year, the affairs of the province subsiding into some order and quiet, the governor thought it proper to resort to the regular and constitutional mode of exercising the powers of government, by calling an assembly. He, therefore, issued a proclamation for that purpose, bearing date the 14th of December, 1647, in which he states, that "Whereas the present important affairs of the province do necessarily require the speedy general assistance and assent of the inhabitants thereof, as

An assembly called.

* "Council Proceedings from 1636 to 1657," p. 165.

† I rely upon this fact, because it is so stated by Mr. *Kilty*, (in his *Landholder's Assistant*, p. 104,) who had opportunity of accurately consulting the records.

‡ Mr. *Kilty*, in his treatise last cited, *ibid*.

CHAP. V. well for the settlement of some present urgent difficulties, as for
 1647. the establishment of such wholesome laws as shall be conducing to the well and happy government of the said province; these are, therefore, to declare unto all persons, whom it may concern, that I do intend to hold a general assembly at St. Mary's on the seventh day of January next, and I do further require, in the lord proprietary's name, all and singular the inhabitants of this province, either by their personal appearance, or by proxy, or delegates, to attend the governor and council at St. Mary's, on the seventh of January as aforesaid, there to advise and consult of the important affairs of the province; where, by way of caution, I advise all such as shall not give their personal attendance therein, that they make choice of such persons for their delegates, whose able judgments and fortunes may render them more considerate to the weal public." Special notice thereof was also given to the inhabitants of the isle of Kent, the journal of this session stating, that "summons had been sent up to Kent by way of proclamation."

1648. On the seventh of January, (the day appointed by the proclamation,) the governor and freemen of the county of St. Mary's met, but no return of the summons being made from Kent, the governor adjourned the assembly till the seventh of February. In a few day afterwards the members from Kent arrived, when the governor upon consultation, thinking that "so long delay," as waiting to the day of adjournment, would "prove disadvantageous to the whole country," issued his writ to the sheriff of St. Mary's county to give notice to all the inhabitants thereof, that he intended to anticipate the aforesaid adjournment, and expected them, either by personal appearance or by proxy or delegates, to attend the governor and council at St. Mary's on the seventeenth instant.

The assembly meet.

The house accordingly met on the 17th, and also on the 18th of January, but "by reason of the absence of Mr. Bretton, their clerk, the house adjourned till Thursday next."

"On Thursday, the 20th of January, the general assembly at St. John's assembled."—Present, governor Greene, captain Robert Vaughan, fourteen other members whose names are stated on the journal, "and divers other inhabitants," as the journal expresses it.—It is stated therein also, that captain Vaughan appeared "with twenty-six proxies of the inhabitants of Kent;" that is, that he appeared as a delegate from or representative of

twenty-six inhabitants of Kent.* In like manner the fourteen members, whose names are stated on the journal, (from St. Mary's,) are each of them mentioned as appearing with their respective number of proxies therein stated, amounting for the whole fourteen to fifty-six proxies, that is, fifty-six voices to be counted on a vote besides their own, and besides the twenty-six voices to be given by captain Vaughan.—After the appearance of these members had been recognized on the journal, and after the verification of their powers as proxies, as we may suppose, “the house was adjourned *by the governor* till two o'clock in the afternoon.”

CHAP. V.
1648.

It will perhaps have occurred to the reader, that the mode of summoning this assembly varied somewhat from that, which, in several instances, had been before practised in the province. No writs of summons, directed either to the sheriff or individual freeholders or freemen, of either of the counties of St. Mary's or isle of Kent, appear to have been issued; but proclamations were published in each of those counties, which were the only parts of the province, where settlements of any consideration had been as yet made, “declaring to all persons whom it might concern, that the governor intended to hold a general assembly at St. Mary's on the 7th of January, and requiring *all the inhabitants* of this province, either by their *personal appearance*, or by *proxy*, or *delegate*, to attend the governor and council at St. Mary's.”—From this it would appear, that *every inhabitant* of the province was considered as having a right to a seat in this assembly, whether he was a freeholder or not; but, as will presently appear, it seems to have been considered necessary, that he should be a *freeman*, and not a *servant*. Hence, therefore, it may be inferred, that those members, who did attend, were such inhabitants as to whom it was convenient to do so, and consequently brought with them *proxies*, or authorities, to vote, from those of their neighbours or fellow inhabitants of their respective *hundreds* of St. Mary's county, and from the isle of Kent generally, who could not conveniently leave their business and their homes. This confused and unsettled state of the legislative powers of the provincial government, seems to have presented itself to the governor and council, as well as to the different

* It will be recollected, that captain Vaughan was at this time also, by the commission before stated, of the 18th of preceding, (see ante, p. 304,) “chief captain and commander” of the isle of Kent; which office seems to have been of the nature of a lieutenant or deputy governor, under the governor of the province.

CHAP. V. members, who had assembled, as a subject which demanded
 1648. their first and principal attention. Accordingly, as soon as the
 Their pro- house assembled "at two o'clock in the afternoon," agreeably to
 ceedings. their adjournment, a bill, previously prepared, as it seems for
 this purpose, was read, entitled, "an act for settling this present
 house of assembly;" which was, as follows:

"Be it enacted by the lord proprietary, of and with the advice
 and assent of the freemen of the province, that his lordship's
 council present in the province,* and these sixteen persons, cap-
 tain John Price, captain Robert Vaughan, Mr. Fenwick, Mr.
 Bradnox, Mr. Conner, Mr. Thornborough, Mr. Brooks, Thomas
 Allen, Richard Banks, Barnaby Jackson, George Saphyer, George
 Akerick, John Medley, Walter Waterlin, Walter Pakes, Edward
 Packer, or any ten of them assembled with the governor and the
 clerk of the assembly, at the time and place prefixed by the said
 governor, shall be a house of assembly to all intents and pur-
 poses, and all bills passed by the said freemen or the major part
 of them, and enacted by the governor, shall be laws, after publi-
 cation thereof under the hand of the governor and present seal
 of the province, as fully to all effects in law as if they were ad-
 vised and assented unto by all the freemen of the province in
 person.

The freemen assented unto it ;

Published *Eod.*

The governor assented unto it ; and enact-
 ed it in the name of the lord proprietary."

No further proceedings of this day's session appear on the
 journal, except that "the house was adjourned by the governor
 till to-morrow 9 o'clock."—From which expression it may be
 inferred, that the house had yielded to *the governor* their consti-
 tutional right of *adjournment*, though it is possible, that, agreea-
 bly to the resolution of the assembly in the year 1641-2, it was
 adjourned "by and with the consent of the house."†

Although by this adjournment the house was to have met on
 the next day, yet no mention is made on the journal of any pro-
 ceedings on that day ; but, on Saturday, the 22d of January, a

* By the last commission for the council, which governor Calvert brought out
 with him on his return from England in 1644, Giles Brent, John Lewger, Tho-
 mas Greene, Thomas Gerard, and James Neale, esq's, were appointed to form
 his lordship's council in the province.—(See before, p. 284.) No commission for
 the council of any later date appearing on our records, the preceding gentlemen
 must be considered as the members of his lordship's council in the province at
 the time of passing the above act, with the exception, that Mr. Greene was now
 advanced to be governor of the province.

† See ante, p. 195.

circumstance occurred, which deserves notice.—Under a principle heretofore remarked upon, as being repeatedly exercised in the early sessions of our provincial legislature, and was evidently so at the present session, every *freeman* within the province was entitled to a seat in the assembly thereof, and therefore agreeably to the principles of the English constitution with regard to the house of lords, every freeman, so entitled, had power to appoint another freeman to appear and vote for him in his stead, as his *proxy*; but, it would seem, that agreeably to another ancient principle of English law, that a legislator sitting, under a delegated authority, could not delegate that delegated authority to another;* and that, therefore, none of the members, enumerated as such in the preceding act “for settling this present house of assembly,” and who had been also authorized to vote as *proxies* for other freemen not present, could, on absenting themselves from the house, appoint another member to vote for any other person than himself; yet this appears to have been attempted, as it would seem from the following entries on the journal of that day.

“George Akerick” (one of the sixteen members nominated in the last preceding act,) “appointed Mr. Clark, *proxie* for himself and all his voices.” Also, “John Medley” (another of the sixteen before mentioned,) “appointed Francis Posie *proxie* for himself and all his voices.”

As these two gentlemen,—Mr. Clark and Mr. Posie were not, either of them one of the sixteen members enumerated in the last preceding act, their sitting in the house would appear to have been an additional irregularity; but it is possible, that as the act has no expressly exclusive terms, other freemen of the province might have been considered as admissible to seats in the house when claimed by them. The house, however, appears to have been sensible of these irregularities; as may be inferred from the following *order* made by them on their next day of sitting:—

“Monday, 24th January.—It is this day ordered by the house, that no one, except the forenamed 16 members, Published *Eod.* or their *delegates*, assembled, with the governor and the clerk, shall have vote or seat in the house *afore the general day of sessions.*”

* See this principle remarked upon before, in p. 49.

CHAP. V. It may be remarked on this order, that although the words—
1648. “or their delegates,”—would authorise any one of the sixteen to make a proxy for himself, and that such proxy might be another person than one of the sixteen, as appears to have been the case in regard to both Mr. Clark and Mr. Posie, yet it does not seem to go so far as to authorise him to make a proxy for any other person for whom he had appeared as a proxy; and, therefore, the appointments of George Akerick and John Medley, “for all their voices,” do not appear to have been strictly included within the above order. It is possible, however, that such “delegates” of any of the sixteen members might, by implication, have been considered as invested with all the powers before vested in their principals, and voted accordingly.

Some obscurity also seems to attend another expression in the above order:—“afore the general day of sessions.”—This can be interpreted to mean only “the day” to which the governor had adjourned the assembly, before the arrival of the members from Kent as before stated, to wit, “the seventh of February,” when other freemen or inhabitants of the province, then those sixteen mentioned in the act, might be admitted to their seats in the house, and the above order, of the 24th of January, would cease to operate. But, although this session appears to have continued until the fourth of March following, yet no proceedings of the house, after the month of January, appear on record, except some depositions which will be hereafter stated.

Another order of the house took place on this same day; (January 24th,) which, as it has a close connection with a subject which seems to have agitated the minds of the people of this province for several years after the late restoration of governor Calvert, cannot with propriety be omitted. When governor Calvert raised and mustered his little army in Virginia for the subjugation of his province, he promised the soldiers and others of his party, that the soldiers’ wages and the charges of the expedition should be defrayed out of the private estate of lord Baltimore within the province, and that the people of the province should not be burthened with any of the expenses arising thereon. This promise seems to have been understood, as extending not only to the payment of the soldiers’ wages, while engaged in the expedition, but to their support and maintenance while in garrison at St. Inigoe’s fort for the preservation of the peace and order of the province. The perturbed state of the

colony, throughout the preceding year, (1647,) had produced a scarcity of corn, so that the soldiers in garrison were rendered dissatisfied for want of bread stuff, and some danger of mutiny was likely to ensue. The house, therefore, made the following order, entitled,

“An order of this present assembly for the levying of corn towards the defraying the soldiers’ wages.”

Published *eod.* “Whereas divers of the soldiers, now being in the country are altogether destitute of corn for their present subsistence, which (by conditions with the late deceased governor contracted,) should have been defrayed before this time, but by reason of the scarcity thereof this year in the country, and no corn remaining on his lordship’s estate more than what is already distributed unto the said soldiers, his lordship’s attorney* (to whom it belongeth) is unable for the present to discharge, until corn be brought into the province by way of trade or otherwise; and whereas in the meantime, unless some speedy course be considered upon and taken by the country in discharging of the said corn, it is much to be feared that divers disturbances may happen in the province, even to the utter subversion and ruin of the same; to prevent which mischiefs, (it being apprehended, that there is some considerable quantity of corn in the country by divers concealed for their private interests, which if it were purchased of the owners and distributed in part among the said soldiers would be a great satisfaction to them, and consequently a stop to all fears of ensuing mischiefs,) Be it therefore ordered, by the authority of the aforesaid present assembly, that the governor shall have power, by one or more sworn officers thereunto by him appointed, to view and measure every man’s corn in the province, and where there shall be more found than sufficient to suffice that household, that is to say, above two barrels for every head except sucking children, to press the same and deliver it to his lordship’s attorney for the soldiers’ use, allowing the owners thereof 150 lb. tobacco per barrel at the next crop, or to have so much again restored this year if corn should be brought into the province by trade or any other ways, if they shall desire it, to be recovered of his lordship’s attorney; and any one that shall conceal any corn, and not bring all his whole quantity of corn to the officer’s view, that then such party shall forfeit the said

* This seems to mean his lordship’s attorney *in fact*—Miss Brent before mentioned, and not the attorney general of the province.

CHAP. V. corn so concealed to the lord proprietary, and be fined in double
1648. the price of the said corn.

“And it is further ordered, by the authority aforesaid, that the proclamation set forth by the governor, bearing date November 8th, 1647,* concerning the exportation of corn out of the province, as also the preservation of the increase of the stock of horses, be in full force and power, until it shall be repealed by the said governor.”

Two or three other circumstances occurred at this session, illustrative of the constitutional principles of the provincial government at this period, and therefore deserve to be mentioned.

At the sitting on “Wednesday, the 26th of January, Nicholas Gwyther petitioned to have vote in the house as a *freeman* of the province.—Mr. Fenwick denyeth it, saying, that he oweth him *service*.”—On Saturday, the 29th of January, the assembly took up the consideration of Gwyther’s petition, and the following entry appears to have been made the result thereof.

“Upon the petition of Nicholas Gwyther the house censured, that they found no service due to Mr. Fenwick from the said Nicholas Gwyther; but, that the product of his labour, over and above his necessary maintenance after war was done, should be coming to Mr. Fenwick; the said Nicholas Gwyther to bring in upon oath a just account into the house, between this and Monday morning, to the time that this *service* expired.”

Nothing more appears on the journal relative to the subject; but we may infer from the terms of the preceding decision or “censure” of the house, as the phrase was in those times, that in case it should appear, that Gwyther was not a *servant* of Mr. Fenwick, he (Gwyther) would be entitled to a seat and vote in the house. Consequently, that the word *freeman* was not constitutionally synonymous with that of *freeholder*, but meant any man who was not a *servant*; which opinion seems to be consonant with that before expressed by the assembly of September, 1642, in the case of Mr. Weston.†

It is at this session also, that Miss Margaret Brent, the remarkable lady before mentioned, made her application to the

*There is some variation here in mentioning the *date* of this proclamation as above, as being the *eighth* of November, when the record of the proclamation at large, as before cited, p. 314, states it as of the *tenth*. The reference above is certainly to the same proclamation before stated as dated the *tenth* of November. It might have been an error in the clerk who made the original record or who transcribed it into the present book.

† See before, p. 238.

house of assembly, "to have a vote in the house for herself, and another as his lordship's attorney. This was refused peremptorily by the governor, Greene, and the lady protested in form against all the proceedings of that assembly unless she might be present and vote as aforesaid."*—It will be recollected, as being just before stated, that the "administrator" of Mr. Leonard Calvert's estate was adjudged to be the most proper person to act, in the place of Mr. Leonard Calvert deceased, as his lordship's attorney *in fact*, for the management of his private estate within the province. The above incident is additional proof, that Miss Brent was the "administrator" alluded to in that adjudication. As a woman is certainly, by the law of England, not only unentitled to a vote at an election for members of parliament, but is ineligible to a seat in the house of commons, either in her own personal right or as the representative of any county or borough, it would seem, that governor Greene, or the house for him, as is most probable, decided with great propriety in refusing to Miss Brent a seat and vote in the house of assembly. Not that women in general, or this lady in particular, are or were not endowed with sufficient understanding to perceive and direct the true interests of a state, but in popular assemblies there would be an indelicacy in their mingling in the order of debate with the opposite sex; while at the same time experience in the reign of queen Elizabeth, to whose character that of our Maryland lady may be aptly compared, has abundantly demonstrated, that monarchical power cannot be more safely lodged than in female hands.

The other and only proceeding of the house of any importance remaining on the journal, not yet mentioned, is a *protest*, entered on the journal by a large majority, if not the whole, of the members of the house, with their names annexed thereto,† against all the laws" (they were only two in number) "made at the last general assembly of the 29th of December, 1646–7, convened by governor Calvert immediately on his restoration to the government of the province. The protest was as follows:—

* This fact, as above stated, is taken from *Kilty's Landholder's Assist.* p. 104. Nothing appears on the journal of the house relative to the matter, or if it does, I have accidentally omitted it in my notes. From Mr. Kilty's authority, which he cites in support of it, "*Liber.* No. 2, folio 289," it must have been in some other book, than that containing the journal of this session, entitled, "Assembly Proceedings," &c; perhaps one in the land office.

† It was signed by seventeen members having one hundred and twenty-eight proxies, or voices, besides their own.

CHAP. V. "We the freemen assembled in this present general assembly
1648. do declare under our hands, and generally, jointly, and unanimously protest against all laws which are now pretended to be in force [since] the last general assembly, conceiving that they were not lawfully enacted, for that no summons issued out to all the inhabitants, whereby their appearance was required by lawful authority.—Witness our hands this 28th January, 1647."

This protest seems to have given much offence to governor Greene; who, accordingly, on the next day, entered his counter protest "against all such undue proceedings:"—as follows:

"January 29th, 1647.—Whereas the freemen assembled in this present general assembly have jointly and unanimously protested against all the laws enacted by the late governor deceased at a general assembly held by him at St. Inigoe's fort, on the 2d of January, 1646, as appears upon record under the hand of John Lewger, esq., secretary of the province, falsely pretending an unlawfulness in the said acts for want of due summoning the freemen of the province by a lawful authority.

"I, Thomas Greene, esq., his lordship's lieutenant governor for the time being, do absolutely protest against all such undue proceedings, and do hereby declare the aforesaid assembly held by the governor as aforesaid at the time and place aforesaid to be most lawful, and all acts therein assented unto by the freemen, and enacted by the governor aforesaid, to be laws of the province, as fully to all effects in law, until his lordship shall have signified his disassent thereunto, as any laws heretofore in the province have or ought to have been; and further I declare in the face of this present assembly, that I shall, to the utmost of my power, by virtue of his lordship's commission, given to me in that behalf, see the due observance of the same throughout all the parts of this province, until his lordship's disassent thereunto shall appear under his hand and seal as afore.

THOS. GREENE."

It seems an extraordinary circumstance, as has been before observed, that governor Calvert, immediately on his restoration to the government, should have taken up the same assembly which had been convened and sat under the authority of Mr. Hill; especially, if it was true, as stated by the assembly of 1649, in their letter to the lord proprietary, that most of the members of that assembly so convened by governor Calvert on his restoration, were disaffected to the lord proprietary's government, or personal enemies to governor Calvert. It seems pro-

bable, from some subsequent proceedings in the province, that governor Calvert was anxious to avail himself of every circumstance favourable to facilitate his restoration to the province, and that to conciliate the minds of the disaffected he agreed to call the same assembly, which had before sat under the authority of Mr. Hill, under an expectation that they would assent to laws favourable to his permanent possession of the province. They appear, however, in the act entitled, "an act for customs," to have over-reached him; if the act was expressed, as stated in the subsequent act of 1661, ch. 6, that the assembly granted the customs therein mentioned to the lord proprietary "in consideration that his lordship would undertake to defray the whole charge of the government in war and in peace." If this meant more than to defray the charge of the expedition to recover the province, it was certainly an unreasonable stipulation and advantage taken of the governor under his embarrassed circumstances; for, in case of a war waged against or within the province by a foreign enemy, as the Indians for instance, the inhabitants ought to have borne the expense, presupposing always that the proprietary government was the only just and legitimate one, and the customs might not have been sufficient for such accumulated expense. It is difficult, however, to reconcile these suppositions with the preceding protest of this present assembly, and the earnest anxiety of the governor in his counter protest to "see the due observance" of the acts passed at that assembly of 1646-7. Those acts, particularly that entitled, "an act for customs," must have been beneficial to his lordship, or the governor, and indeed his lordship himself, according to the assembly's letter to him, (in 1649,) would not have manifested such an anxiety to sustain their validity. On the contrary, the people of the province must have conceived them unfavourable to their interests at this time, or the assembly of this session would not, thus unanimously to all appearance, have attempted to avail themselves of so frivolous an objection to the proceedings of that assembly in 1646-7, as the want of a legal summons appears to have been; and indeed the lord proprietary himself, in his commission of the 12th of August, 1648, (hereafter stated,) annexed to the body of laws then sent in by him, states it as a fact, "as he was informed," that the two acts of the session of 1646-7, principally perhaps the "act for customs," were "found too burthensome and inconvenient for the

CHAP. V. people." It is among these circumstances only that we can
 1648. trace the causes for the preceding protest.

Annexed to the proceedings of this present assembly of 1647-8, as they are on the record, appear some depositions, "taken in open assembly, 29th February, 1647," as therein expressed, for the purpose of proving the promise and agreement of governor Calvert, that all the charges and expenses of retaking possession of the province, particularly the "soldiers' wages," should be paid out of the lord proprietary's private estate within the province, and that governor Calvert agreed with the soldiers, that they should take "cows, and heifers, and calves," at a certain price therein mentioned, "towards their wages."*

If this session of assembly continued to, and ended on, the fourth of March, as stated by Mr. Bacon, in his Collection of the Laws of this province, the journal thereof, as now remaining, is imperfect; for, nothing more appears of that journal at this day than what has been in substance herein already stated; except, that on "Thursday, 27th January," a committee was appointed to draw up a bill for the keeping of a garrison at Cedar point; but no such bill appears on record.†—The titles of four other acts are stated by Mr. Bacon, as having been "passed on the fourth of March, 1647," at this session; which titles, he has probably collected from subsequent acts of assembly, whereby they were repealed; for, he subjoins to his statement of them the following—"N. B. I do not find the acts of this assembly any where recorded." The first and second of them, however, appear on the journal, as herein before stated. The one entitled "an act touching Pagans," confirmed among the perpetual laws of 1676, though afterwards repealed in 1678, did a copy of it now exist, might gratify philosophic curiosity in the investigation of the views, in which our ancestors were accustomed to consider the *Indians* of America, to whom, without doubt, the word "pagans" related. The last act also of this session, passed on the last day thereof, as it would seem, entitled "an act for settling government in the province as the present state of things will permit," would have thrown considerable historical light on the affairs of the province at this period of time; particularly the first clause thereof "touching soldiers' wages," which it seems

* See these depositions at large in note (LVIII.) at the end of this volume.

† The journal of this assembly, from which the preceding substance of it has been stated, is recorded in a book, now remaining in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 308 to 321.

was *dissented* to by the lord proprietary, probably on account of the pledge made by governor Calvert of both their private estates within the province as herein before stated. The third clause thereof also—"touching levies and judgments;" the fourth "touching officers' fees;" the fifth "touching oath of fealty;" were each of them in like manner *dissented* to; the two last "touching the defence of the province, and the fort at St. Inigo's," must have been temporary in their nature, and therefore expired when their uses ceased.

To close the session amicably, and to conciliate, if possible, the affections of all the inhabitants of the province after their late dissensions, we may suppose to have been the motives of governor Greene in an executive act or measure performed by him on the last day of the session—the fourth of March. On this day he thought it proper to issue his proclamation of pardon to every inhabitant residing within the province for any offence whatsoever committed by any of them from the fourteenth of February, 1644, unto the sixteenth of April then last past, and to every other person out of the province "acknowledging sorrow for his fault," and requiring pardon before the feast of St. Michael the archangel next, excepting Richard Ingle, mariner.*

Although the people of the province appear to have been now restored to a situation of apparent peace with each other; yet it would seem, that their natural enemies—the *Indians*, ever restless at the intrusion of Europeans upon them, were again exhibiting some symptoms of a disposition to invade the settled parts of the province, particularly those of St. Mary's. Governor Greene, therefore, thought it proper to issue a proclamation, about the latter end of May, giving notice of his having adjourned the court, then to be held in the beginning of June following, until the next October, assigning as a reason therefor, that in case of such intended invasion, of which he had received information, the attendance of jurors and others upon the court "would much weaken those parts from whence they came."† Whether this reason for this adjournment of the court was real or pretended, some doubts seem to arise, not only from the expression in the proclamation—"considering the danger of the present times," but also from the circumstance of the freemen of the county of St. Mary's actually meeting, about the middle

Proclamation of general pardon.
1648.

Provincial court adjourned, and proclamation thereof made.

* See this proclamation at large in note (LIX.) at the end of this volume.

† See this proclamation in note (LX.) at the end of this volume.

CHAP. V. of June, "to advise touching the levy of the charges incurred
 1648. this year." So that "the danger of the present times" might arise, not merely from the expected invasion of the Indians, but from other causes not now to be ascertained. It would appear to us at this day, that the meeting of the freemen to lay the county levy would have "weakened the parts from whence they came," as much as their attendance on the provincial court would have done. On this proceeding, however, for laying the county levy,* it seems necessary to remark, that it appears to be one of the first instances on record, where county charges were levied in a distinct manner from those which might be called provincial charges. It does not appear, that "the freemen of the county of St. Mary's" met together on this occasion as a *legislative* body, but in the same manner as has been long since usual, under both the provincial and state governments of Maryland, for the justices of the peace of a county to meet and lay the levy of their respective counties.

Affairs of
 England
 having re-
 lation to
 Maryland.

Connected as the affairs of a colony, especially in its most youthful state, necessarily must be with those of the mother country, and more particularly when under the government of a lord proprietary, whose residence and conduct in the parent state would have great influence and bearing on the affairs of his province, we are unavoidably often led, not only to pay attention to the political proceedings of the parent country, but to inquire also as to the part and conduct which such lord proprietary may have taken in those proceedings. But in this, as before observed, we have no source of information to recur to, except such few scanty materials as our provincial records afford; and in this respect they are totally barren of information. Scenes of as interesting a nature took place in England in the course of the summer of this year, (1648,) as any which had hitherto occurred since the commencement of the unhappy civil wars of that country. After the king had given himself up as before observed, to the Scotch army, in the year 1645, a general pacification, as to military affairs, seems to have taken place throughout England for some years. But "civil dudgeon" seems never to have ceased to rage. While there were church of England-men and papists to subdue, the two great fanatic sects—the presbyterians and independents conjointly exercised their powers against them. But, having laid them prostrate, the contest for

* See the record of this meeting in note (LXI.) at the end of this volume.

power necessarily commenced between themselves. The majority of the members of parliament were presbyterian, but the independents, with the cunning Cromwell at their head, had, by an artful "new model" of the army, secured them on their side. A military despotism ensued, and the army, that is Cromwell, dictated to the parliament whatever he was pleased to have done. Thus it always has been, and will be, under republican governments, except in the instance of some extraordinary chief, as Washington, whose virtue can controul his ambition. The presbyterians, thus unexpectedly bereft of power, began to grow restive and uneasy under their yoke. The Scotch presbyterians claimed a right in the person of their king, (who was now closely imprisoned in Carisbrook castle in the Isle of Wight,) as well as the people of England. To release his majesty from this imprisonment, ostensibly at least, they marched a considerable army into England, about the beginning of July in this year, 1648; but, although the royalists had risen in numerous bodies in different parts of the kingdom, so as to create a considerable diversion of the enemy from bringing all their force against the Scotch army, yet these presbyterians were so jealous of the church of England, and so anxious to get the king into their own power in order to dictate to him their beloved abolition of episcopacy, that they would not suffer the royalists to join them; and practised such delays in their march, as gave Cromwell time to collect his forces together. The consequence was, that after this *independent* leader had defeated the little royalist army under Sir Marmaduke Langdale, to whom the Scotch general refused any assistance, he so totally routed these Scotch presbyterians at Preston, in Lancashire, on the 19th of August this year, that not a man of them remained in England, except the killed, wounded, and prisoners.

What part the English Roman Catholics took in these scenes of this year, the histories of England do not particularly inform us. It is certain, that such were the prejudices against them among the ruling powers of that kingdom at this time, that they could not openly avow themselves as such, or at least they could not be openly patronized by any of the great religious parties. From the natural operations of gratitude, we ought to infer, that they would have favoured, as far as in their power, the cause of the royalists or church of England. But there is too much ground for suspicion, that a great portion of them had adopted

CHAP. V. the sinister resolution of remaining neutral, cherishing a vain
1648. hope, that as the independents *professed* a general toleration of religious sects, they would be in a better state under them than under the church of England. The state of Ireland at this time affords strong evidence of such a disposition in the Catholics. When the civil wars of this century first commenced in England, the Irish, as well as the English Catholics heartily, to all appearance, joined in support of the royal cause. But, through the clamour of the fanatic members of parliament—both presbyterian and independent, the king was obliged to enforce the laws against them more strictly than he had before done, in compliance with the wishes and indeed remonstrances of those sects. As soon as the two parties in England were arrayed in hostile armaments against each other, the Irish Catholics embraced this period as a favorable æra, for obtaining all that toleration if not ascendancy in Ireland, to which from their numbers they deemed themselves entitled. They formed armies, and instituted a national council of their chiefs or principal men, who sat at Kilkenny in Munster for the direction of their affairs. When the royal cause in England was on the decline, and the king himself became a prisoner to the English army, the Irish Catholics split into two parties. The more moderate of them, principally those of English descent, and especially the army of Catholics under general Preston, who commanded them in Munster and within what was commonly called the English Pale, were for adhering to the royal family of England. But those of Ulster under Owen O'Neale, a descendant of the old aboriginal Irish chief, Shan O'Neale, were for establishing a monarchy completely independent of England; when O'Neale probably flattered himself, that the crown might fall upon his head. In this the latter party were highly encouraged by the Pope's Nuncio—Rinuncini, who had been sent into Ireland, probably for this purpose, about October, 1645; and had ever since indefatigably continued to stimulate the Irish Catholics to every excess. A pamphlet was published by them, (in the year 1647,) to demonstrate,—“that the kings of England never had any right to Ireland; that, supposing they once had, they had forfeited it by turning heretics, and neglecting the conditions of pope Adrian's grant; that the old Irish nation might by force of arms recover the lands and goods taken from their ancestors by usurpers of English and other foreign extraction; that they should kill not only all the

Protestants, but all the Roman Catholics of Ireland who supported the crown of England; that they should choose an Irish native for their king, and throw off at once the yoke both of heretics and foreigners.”* CHAP. V.
1648.

In coincidence with this state of things in Ireland, even the queen of England herself, the unfortunate Charles's wife, who was now resident at Paris, had been constantly urging the king to give up the church of England and throw himself into the arms of the presbyterians, as the surest means of obtaining the zealous aid of the Scotch in regaining his crown.† She also prompted her son prince Charles, who had about this time, (in the summer of 1648,) took the command of a part of the English fleet, which had revolted from the parliament, to pay the greatest court to the presbyterians and abandon the church of England. The royal monarch, however, though closely confined in prison, stuck to his integrity and his religion, nor would he give them up, though to redeem his crown and his life.

This short sketch of the religious contests in Europe, at the period of time of which we are now treating, (for, the English civil war of this century was founded in religious contests merely,) is here given with a view of throwing some light on the otherwise obscure transactions of our humble colony. But we are still at a loss for the interesting information of the conduct of our lord proprietary amidst all these European scenes. When the subsequent attempt was made in 1656, to deprive him of his province, he was accused by the agents of the Puritans of Maryland then in England, “of practising with the king at Oxford and Bristol against the parliament;” which must have occurred, if at all, in the year 1643 or 1644; and that, from his special favour with the king, he had then procured two commissions; one, jointly to himself and his brother—the governor, relative to the trade of his own province, which, as is stated, “tended to the ruin of the parliament's interest;” the other, to himself solely, “concerning the customs in Virginia, which he was to receive under the king.”‡ From these circumstances we may infer, that lord

* Leland's Hist. of Ireland, vol. iii. p. 320.

† One proof of this arises from the circumstance, hereafter stated, of her sending Sir William Davenant, in the year 1646, from Paris to the king, when he was a prisoner to the Scotch at New Castle, in England, expressly for the purpose of persuading him to join the presbyterians and desert the church of England.

‡ See the document entitled, “A Paper relating to Maryland,” inserted at the end of this volume, taken from *Hazard's Collections*, vol. i. p. 623, who states it as from *Thurloe's State Papers*, A. D. 1656.

CHAP. V. Baltimore was by inclination attached to the king's cause and the real support of his crown ; but possibly, when the scene changed,—when Bristol was taken, and all the west of England was conquered by the parliamentarians, and the king had given himself up to the Scotch, and the prince of Wales was driven out of Cornwall into France, he might have thought with some other Roman Catholics of that time, that the destruction of the established church of England would be the resurrection of religious liberty to Catholics as well as dissenters.—Fatal deception !—However, agreeably to the dictates of prudence, we may suppose, that he now thought it proper to temporise. From several important documents sent by him to his province, which bear date at “Bath,” in August of this year, 1648, we are induced to infer, that his present place of residence was in that city in England. It had been taken from the king's party, with all the rest of the west of England, in the summer of 1645. His lordship had probably, either for health or retirement, afterwards fixed his residence here ; and from hence dates his orders and regulations to his province of Maryland.

Governor
Greene re-
moved and
governor
Stone ap-
pointed in
his stead.

He had now, it seems, thought it proper to remove governor Greene, (whom his brother Leonard Calvert had originally appointed,) from the office of lieutenant general and governor of his province, and to appoint in his stead William Stone, esqr., who, as it seems, was then an inhabitant of Northampton county in Virginia, and who is moreover stated to have been “a zealous Protestant, and generally knowne to have beene always zealously affected to the parliament.”* Although the cause of the removal of governor Greene is hinted, in one of the papers of the agents before mentioned, to have been for some “matters *against* the lord Baltimore ;”† yet, as our provincial records present no explicit authority for supposing lord Baltimore to have entertained any serious dissatisfaction at the conduct of governor Greene,‡ particularly as he was placed first in the commission of

* So stated in Mr. John Langford's pamphlet, entitled, “A Refutation of a scandalous pamphlet, entitled, “Babylon's Fall in Maryland ;” both more particularly quoted hereafter.

† See the *Paper* entitled “A Breviat of the Proceedings of the Lord Baltimore,” &c. inserted at the end of this volume.

‡ It is proper to mention, however, that some allusion seems to have been made, in the assembly's letter to lord Baltimore, in 1649, (hereafter stated,) to some “indignation” entertained by lord Baltimore against “his *then* governor,” on account of the distribution of his lordship's *private* property in the payment of the soldiers. The *then* governor must have been governor Greene ; as it ap-

the council of the same date with that to governor Stone, we are warranted in relying upon the express inducement to that measure assigned in that commission to governor Stone, as being the *principal* cause of such a change in the office of governor: that is, that governor Stone "had undertaken in some short time to procure five hundred people of British or Irish descent to come from other places and plant and reside within our said province of Maryland." This large acquisition of numbers would have been, as is expressed in his commission, "an advancement of the colony;" and the investment of Mr. Stone in the office of governor might have been a *sine qua non* in some stipulations or agreement entered into between him and lord Baltimore to this purpose. It is possible also, that lord Baltimore, as before suggested, might have wished to temporise, and, in order to give the appearance of impartiality with regard to religious sects, thought it most prudent to appoint a "Protestant" governor, instead of Mr. Greene, (who, from subsequent documents, appears to have been a Roman Catholic,*) as well as a *Protestant* secretary of the province, (Mr. Hutton,) instead of Mr. Lewger, and also a *Protestant* majority in the council. As the reader will find this commission to governor Stone at large among the documents at the end of this volume, some few remarks will here be added only on those clauses of it, which appear to have created some considerable variances from the former commissions to the same purport.

After the usual revocation of all former commissions heretofore granted to any former lieutenant general or councillor of the province, this new commission proceeds in the appointment of William Stone, esqr., to be lieutenant general, &c., of the province, as also chancellor and chief justice thereof, assigning the reasons before mentioned for such appointment, with a special power, not before expressed in any former commission to the lieutenant general, of appointing and constituting all officers and ministers in the province, *excepting councillors* and such other officers as should be specially appointed by the lord proprietary;

Strictures
on the
com-
mis-
sion to go-
vernor
Stone.

appears, that such distribution was made by Miss Brent, in virtue of her appointment as attorney in fact to lord Baltimore after governor Calvert's death. This transaction most probably was alluded to by the agents above mentioned in their expression of "matters against lord Baltimore."

* His name does not appear in the list of those *Protestants*, who signed the certificate of April 17th, 1650; which most probably would have been the case, had he been a *Protestant*, he being then one of the council.

CHAP. V. which *exception* might possibly have arisen from some former exercise of that prerogative of the lord Baltimore by either his brother or Mr. Greene.* 1648. The usual power also is given to him to call assemblies and *assent to laws*; but this last authority is clogged with closer restrictions than in any former commission. A proviso, annexed to this clause of power, restricts the lieutenant from assenting to the *repeal* of any laws already or hereafter to be enacted, and also from assenting to any law for the constitution, confirmation, or change of any officer, or to any law which shall impose any fine, forfeiture, or confiscation to any other use or uses than to the use of the lord proprietary, or to any law or laws which may any way concern *matters of religion*, constitution of parishes within the province, payment of tithes, oaths to be imposed or taken by any of the people in the province, treasons, matter of judicature, or any matter or thing which may any way infringe or prejudice any of the rights, prerogatives, or royal jurisdictions and dominions of the lord proprietary over and in his said province, "*without further and special warrant* from time to time under his hand and seal at arms first had and obtained, and published to a general assembly of the freemen of the said province or their deputies, and to be kept from time to time among the records of the said assembly there." Although this expression—"without special warrant,"—is rather obscure, yet it receives some elucidation from a document, which was sent by the lord proprietary, (and which will be hereafter stated at large,) bearing the same date and accompanying this commission to governor Stone; annexed to which document or "*commission*," as it is entitled in the record, was a copy of certain laws, "sixteen in number and written on three sheets of parchment," which laws or acts governor Stone was, by the last mentioned commission, directed to "propose" to the general assembly to be enacted by them. So that from hence it appears, that the lord proprietary had imprudently resumed his favorite and long cherished prerogative of *initiating* or propounding to his provincial legislature all laws, which were to be enacted by them. But this renewal of his old scheme did not succeed, as will soon be herein seen. We discern also, in this proviso, the lord proprietary's caution relative to "matters of religion," and to what

* But this clause,—"*excepting councillors*,"—seems to be in some degree repugnant to a subsequent clause in the same commission, whereby the governor was enabled to appoint *supernumerary* councillors, "over and above those nominated by the lord proprietary's commission," subject however to removal by the lord proprietary.

might look like an establishment of his own or any other sect of religion within the province, by the division of it into parishes and the payment of tithes. All which was done, without doubt, to avoid giving offence to the then ruling powers of the mother country. But he does not seem to have been equally prudent in the reservation to himself of rather an illegal stretch of prerogative in "imposing upon the people of the province" oaths of his own coining, without the intervention or assent of the provincial legislature; and it might be truly said,—*hinc lachrymæ!* for, from the imposition of the *oath of fidelity*, (accompanying certain conditions of plantation hereafter stated,) which he sent into the province, to be taken by every one before he could obtain a grant of lands within the province, principally (or at least ostensibly,) flowed all the bloodshed which subsequently ensued.

In this commission also was inserted an unusual special proviso, that before the said William Stone or any other lieutenant general should take upon himself that office, they should take the oath, entitled, "The oath of the lieutenant general or chief governor of the province of Maryland," annexed to the said commission. The oath of the lieutenant general hitherto used seems to have been only that, which was prescribed by the act of 1638, ch. 2;* which was very short and couched only in a few general expressions. It is probable also, that the lieutenant general being chief judge of the province by his commission, took also the oath of a judge prescribed by the same act. The lord proprietary, however, since the death of his brother and the perturbation of the times, had very naturally become more suspicious of his lieutenant generals, and to guard against any infidelity in their conduct towards him or his interests, he seems to have taken unusual pains in minutely dictating to them the duties of their office, which they were to observe under the obligatory sanction of an oath; and particularly in surrendering up the office, whenever he should call upon them so to do. It is remarkable also, that the lieutenant general, (who in this instance was a *Protestant*,) was to bind himself by this oath, that he would not directly or indirectly trouble, molest, or *discountenance* any person whatsoever in the said province *professing to believe in Jesus Christ*, and in particular *no Roman Catholic* for or in respect of his religion or in his free exercise thereof within the said province, nor would he make any difference of per-

A new
oath pre-
scribed to
the go-
vernor.

* See this oath of 1638 referred to before in p. 140, and at large in note (XXXII.)

CHAP. V. sons in conferring of offices, rewards, or favours, proceeding
 1648. from the authority which his lordship had conferred upon him as his lieutenant, for or in respect of the said religion respectively, but merely as he should find them faithful and well deserving of his lordship, and to the best of his understanding endowed with moral virtues and abilities fitting for such rewards, offices, or favours; and, if any other person should, during the time of his being his lordship's lieutenant here, without his consent or privity, molest or disturb any person within this province professing to believe in Jesus Christ, merely for or in respect of his religion or the free exercise thereof, upon notice or complaint thereof made to him, he would apply his power and authority to relieve and protect any person so molested or troubled, whereby he might have right done him for any damage which he should suffer in that kind, and to the utmost of his power he would cause all and every such person or persons as shall molest or trouble any other person or persons in that manner to be punished."*

In this measure of his lordship we discern the commencement of that general toleration of all sects of religion, which prevailed under the early provincial government of Maryland, and which has been the subject of eulogium even to the present day. The excellent character which Cecilius lord Baltimore is said to have always borne, would prompt us to impute this proceeding to the most laudable motives—the liberal indulgence of all men in their religious opinions. But, whoever is acquainted with the history of Europe, during the seventeenth century, must know, that no genuine Roman Catholic at that time could entertain these liberal sentiments, or at least openly avow them. All Protestants were deemed by them—heretics, and liable to the strong arm of persecution for their impious and presumptuous doctrines. We must, therefore, unavoidably confess, that this liberal and tolerant measure of lord Baltimore, wears very much the appearance of that policy of conduct, just herein before alluded to, which the English Catholics are accused of having pursued, that is, of joining the two great fanatic sects—the presbyterians and independents, in their united endeavours to effectuate the destruction of the church of England:—this, under the

* The reader will find the above mentioned commission to governor Stone, and the oath of the lieutenant general, both at large in note (LXII.) at the end of this volume.

vain expectation, that, whichever of these two sects should attain the supremacy, the Catholics would meet with greater toleration from them than they had before experienced from the English church. Perhaps also, it partook strongly of that prudent policy, which his lordship seems to have aimed at, in temporising and balancing between these two great rival religious parties.

With the foregoing commission to a new lieutenant general, his lordship sent also a new commission for "his privy council of state," as it is therein expressed; in which none of the former councillors appear to have been reappointed; but Mr. Thomas Greene, the former governor, was now the first named in this new commission of the council. The rest were "captain John Price, Thomas Hatton our secretary, John Pile, and captain Robert Vaughan." A small change in this new commission is also observable, that the lieutenant general or governor of the province is not named as one of the council, as he invariably was in the former commissions. The reason of this might possibly be, that, as the lieutenant general was directed by his commission "to advise with the council," the offices of councillor and lieutenant general might be now considered as distinct, though formerly, in case of the lord proprietary's arrival and presence in the province, as was contemplated, the lieutenant general would have been only a councillor to his lordship without any new commission for that purpose. In this new commission also was inserted a *proviso*, that before any of the councillors therein mentioned should presume to act as such, they should take the oath annexed to the said commission; in which oath was also inserted a clause, similar to that of the lieutenant general before stated, relative to the religious liberty of all sects of the christian religion, and particularly of that of the Roman Catholics. It is worthy of notice here also, that not only the lieutenant general Stone, but all of the councillors appointed by this new commission, except Mr. Greene and Mr. Pile, were *Protestants*,* but of what denomination of Protestants we have no authority to determine.†

His lordship appears to have sent in from England these respective commissions, by Mr. Thomas Hatton, with whom most probably he had held consultations at his residence in Bath in

CHAP. V.
1648.
A new
commission of the
council.

Mr. Hatton sent in as secretary.

* This appears from the declaration and certificate of the principal *Protestants* of the province, of the 17th of April, 1650, hereafter stated.

† See this commission of the council and the oath thereto annexed, in note (LXIII.) at the end of this volume.

CHAP. V. England, about the affairs of his province, and whom he thought
 1648. a proper person to be appointed the secretary of his province. Accordingly, a commission to him for that purpose appears among the records of this period of time, bearing the same date as that to the council just before stated. It is couched in nearly the same terms and expressions as those heretofore given to Mr. Lewger; and, although no mention is made in the commission of any oath to be taken by the secretary, yet an oath to be taken by him is recorded immediately following the commission, and appears to be nearly of the same tenor as the former oath taken by Mr. Lewger. Whether this last mentioned gentleman was now dead, or being a Roman Catholic was now removed by his lordship, it does not appear. His name ceases to occur on the records from this period.*

A new
great seal.

It seemes to have been the intention of his lordship, at this period of time, to have new modelled entirely the executive branches of his government of the province; and for this purpose Mr. Hatton appears to have been sent loaded with a large batch of commissions. Besides those already stated, there was another of the same date, (12th of August,) entitled, a "commission for the great seal." This was rendered necessary, according to the preamble thereof, by reason that "the great seal of the province was treacherously and violently taken away from thence by Richard Ingle or his complices in or about February *Anno Domini* 1644, and had been ever since so disposed of as it could not be recovered again." His lordship in this commission "protests" against all acts done under the authority of that seal since the time of taking it away, as just stated; and moreover substitutes another seal, now sent in by him, the manner and form of which is therein minutely described, and which, as Mr. Bacon observes in his preface to the Laws of Maryland, was the same as that which was continued to be used to the time of his compilation, 1765, and probably during the remainder of the existence of the provincial government.†

Office of
muster-
master ge-
neral insti-
tuted.

A new office also, of a military nature, seems to have been now instituted in the province, denominated—"muster master general;" the duties of which, as referred to in the commission, were to train and exercise the inhabitants of the province to the

* See this commission to the secretary, in note (LXIV.) at the end of this volume.

† See this "commission for the great seal" in note (LXV.) at the end of this volume.

use of arms. A commission for this purpose, dated the 12th of August, now came also, directed to John Price, probably the same gentleman appointed a councillor in the commission for the council, as just before stated. This seems to have been conferred on him, not only for "his knowledge and great abilities in martial affairs," as the commission expresses it, but for "his great fidelity to his lordship on the occasion of the late rebellion by Richard Ingle." The fees of this office were directed to be "as ample as any muster master in *Virginia* of right then had or enjoyed;" which is one among numerous instances, where the internal polity of Maryland was regulated very much after the manner and example of her elder sister colony—*Virginia*.* The same reference to the usage of *Virginia* occurs also in another commission of the same date, (August 12th of this year,) brought by Mr. Hatton, directed to Robert Clerke, gent., to be surveyor general of the province, "with all the fees, &c., and in as ample form and manner as any surveyor of *Virginia* ever had."

It appears to have been usual heretofore for the lieutenant general or governor of the province to appoint a "commander of the isle of Kent," though the commission to such officer might run in the name of the lord proprietary. His lordship himself, however, seems now for the first time to have sent in also, by Mr. Hatton, a new and special commission for that office under his own hand and seal, of the same date, (the 12th of August,) as the other commission before stated, directed to Robert Vaughan, gent., most probably the same gentleman before mentioned in the commission for the council. It would seem from this commission that a *commander* of the isle of Kent was invested with nearly the same executive and judiciary powers as were conferred on the lieutenant general of the province as to the other parts of it by his commission; except that in the *judicial* capacity of the commander he had no cognizance of any criminal matter beyond the jurisdiction of justices of peace in England in the quarter sessions. He was authorised by his commission to elect and choose any six or more of the inhabitants of the island to be his council, with whom he was to advise and consult in all matters of importance, and who were to be constituted, by commission under the great seal of the province, justices of

A new commission also for the commander of the isle of Kent.

* See the commission of "muster master" in note (LXVI.) at the end of this volume. The fees of the muster master were subsequently regulated by an act of assembly for that purpose, 1650, ch. 9.

CHAP. V. peace to hold a court of sessions of the peace with him the commander.*

1648.

Sixteen laws sent in with a commission for propounding them to the assembly.

Concomitant with the preceding commissions another very important one of the same date, (the 12th of August,) was sent in by his lordship, directed "to the lieutenant general, to all the councillors, and to the freemen or their deputies in their general assembly within the province." To this commission were annexed certain acts or laws, sixteen in number, written on three sheets of parchment, each sheet being signed by his lordship, and all three, jointly together with the commission, having the impression of the greater seal at arms affixed unto them, as described in the commission. The lieutenant general is directed by the commission to propose these laws to a general assembly of the freemen of the province or their deputies, "and in case the said freemen or their deputies or the major part of them in any such general assembly within the said province should, within twelve months after the date thereof, give their consent, that all and every of the said acts or laws, jointly contained in the said three sheets of parchment thereunto annexed, should be enacted for laws within the said province by his lordship or lieutenant there for the time being, in his lordship's name, in such manner and form as they are there written or drawn, *without any alteration, addition, or diminution to them or any of them*, in that case and not otherwise his lordship thereby declared his assent to them and enacted them as laws, and at the same time declared his disassent to all and every law which had been heretofore enacted."† We have before observed upon this bold stride of his lordship towards something like arbitrary power, in reserving to himself the sole prerogative or exclusive power in legislation of *initiating* or propounding all laws to be enacted by a general assembly. He had once or twice before attempted this measure without success; and we can account for his repetition of it again at this unpropitious period of his affairs, upon no other ground than that he thought it absolutely necessary in order to secure to himself all his provincial rights.‡ It is sufficient here to observe, that this attempt was as unsuccessful in the

*See this commission at large in note (LXVII.) at the end of this volume.

†See this commission for propounding the laws sent, in note (LXVIII.) at the end of this volume.

‡A mode of colonial legislation, similar to the above of lord Baltimore, was attempted by the English government not very long after the restoration, in 1678, to be imposed on the island of Jamaica, but finally relinquished. See it herein before stated in note (VII.) at the end of this volume.

sequel as any which he had before made. What these laws were, or what were their merits or demerits, we are in no way enabled to determine; as they do not appear at this day on our records in the form in which they were sent. It would seem, however, that some of these laws, now sent in by his lordship, were "chosen and selected out" by the next assembly, (to wit, of April, 1649,) and enacted for laws; some of them probably in the form in which they were sent, others with considerable emendations or alterations, especially those which were subsequently confirmed by his lordship, and particularly that remarkable one entitled "an act concerning religion," as may be fairly inferred from its obvious consonance with the tenor of the preceding commissions and oaths of office so far as they relate to that subject.

As a concluding part of the system of government now adopted by his lordship in his new organization of the affairs of his province may be mentioned another commission, bearing date the twentieth of August of this year; which, although it is a few days posterior in date to those just before stated, yet may be fairly presumed to have accompanied the rest, of which Mr. Hatton appears to have been the bearer. It was annexed to certain new *conditions of plantation*, which in the record bear no date, but are referred to, both in the first mentioned commission of the sixth of August to governor Stone as lieutenant general before stated,* and in this last mentioned one of the twentieth of August annexed to the said conditions, as bearing date "the twentieth day of June last past." This apparent incongruity of dates may be easily reconciled by supposing that these *conditions of plantation* were drawn up, and signed and sealed by his lordship, on the twentieth day of June as expressed, but were not dispatched or sent to America until the execution of the commission of the twentieth of August annexed to them, soon after which last date we may suppose Mr. Hatton to have left England.

The most prominent part of these *conditions of plantation*, principally on account of its being supposed to have been in a

* A small error may be here observed upon in Mr. Kilty's Landholder's Assistant, p. 43, where he gives an "extract of commission to William Stone as lieutenant general, dated the 17th August, 1648."—It should have been the *sixth* of August, as herein before appears. The word "*seventeenth* year of our dominion," in the commission, might, on a cursory view of it, have occasioned the mistake.

CHAP. V. great measure the occasion of the succeeding civil war in the province, and therefore deserving of historical notice here, was the seventh clause or *condition*, whereby it was required, that 1648. "every adventurer or planter that shall have any land granted unto him by virtue of these conditions, before any grant be delivered to him and before it shall enure to his benefit, shall take within the said province the *oath of fidelity* to his lordship and his heirs lord and proprietaries of the said province *hereunto specified*." The *form* of this "oath of fidelity," as here prescribed by his lordship, of which a "specification" or copy was sent, must have been that now remaining on the provincial records immediately following the said conditions of plantation. It purports, at the end of it, to have been "given at Bath under his lordship's hand and greater seal at arms the 20th day of June, 1648;" agreeably to the reference made to it in the commission annexed to the said conditions, as also in that to the lieutenant general. As this *oath of fidelity* will subsequently require more particular animadversion, when we come to those times, in a few years hence, when it was held up by the discontented party as an evil of great consequence and highly oppressive to their consciences, the objectionable parts of it need not be here commented on. It may, however, be proper to remark on the commission annexed to these conditions, that heretofore it seemed to have been the policy of lord Baltimore to confine the admission of adventurers or colonists into his province to those, who were of British or Irish descent, but now by this commission the lieutenant general was authorised to make any person or persons of *French, Dutch, or Italian* descent, who were already planted or should thereafter come and plant in the province, capable of the said last conditions of plantation and of receiving grants of lands therein. This liberality seems to have flowed, principally perhaps, from his lordship's anxiety to increase the population of his province, but also from his now manifest indifference as to what sect of the *protestant* religion his colonists belonged.*

Although the preceding commissions all bear date prior to the last of August, 1648, yet it appears from our provincial records, that they either were not sent from England, or did not arrive in Maryland, or were not opened and published to the

* The reader will find these conditions of plantation, with the commission thereto annexed, and the oath of fidelity subjoined, in note (LXIX.) at the end of this volume.

people there during the remainder of that year. From several documents on record Mr. Greene must have continued to act as governor until the beginning of April, 1649, as all those documents have his name as lieutenant general annexed thereto.

Among the most remarkable of these were several relative to a quarrel between governor Greene and captain Robert Vaughan, at this time commander of the isle of Kent, by virtue of his commission of the 18th April, 1647, before stated.* Captain Vaughan had ventured, as it seems, at divers times, in his discourse on the isle of Kent, where he was commander, to speak of governor Greene in a very disrespectful manner, using "scandalizing and upbraiding speeches" of him, and taxed him with partiality in the distribution of justice. For this governor Greene had brought an action against Vaughan, probably in the provincial court at St. Mary's, and moreover, by virtue of his powers as governor of the province, issued his proclamation, which he sent up to the isle of Kent, and which bears date at St. Mary's on the eleventh of November, 1648, giving notice, that he thereby suspended and revoked all power and authority of command upon the said isle of Kent from captain Robert Vaughan, commander of the said island, and, in the same proclamation, authorised Mr. Philip Conner, one of the commissioners, (that is, a justice of the peace,) of the said county of the isle of Kent, to issue forth all writs and processes necessary for the administration of justice there, and directed him to bind all parties interested over to the provincial court at St. Mary's, there to have tried and determined their suits and causes until further order, finding it necessary, (as he alleged,) for the present to suspend all further power of judicature upon the said island. By a commission also of the same date, directed "to Mr. Henry Morgan, high sheriff of Kent county," (the isle of Kent,) he committed unto him, and added unto his office of high sheriff, the command of all the militia of the said county. The issue of this quarrel seems to have been rather unfavourable to the character of Mr. Vaughan, as it appears to us at this day; for, having come down to St. Mary's, he, on the 9th of December, 1648, before the governor and other parties present, acknowledged and confessed, that the charges he had made against the governor were "foul and rash, and altogether false," and "humbly required forgiveness for such his said misdemeanors, expressing sorrow

CHAP. V.
1648.
Quarrel
between
governor
Greene
and cap-
tain Vau-
ghan.

* See before, p. 304.

CHAP. V. therefor, with purpose of amendment. Whereupon the governor
 1648. withdrew his action and pardoned the offence." The governor seems to have been so completely satisfied with and reconciled to captain Vaughan, that he agreed to reinstate him in his office of commander of the isle of Kent, and for that purpose in a few days afterwards issued his proclamation, bearing date the 11th of December, 1648, reappointing the said captain Vaughan as commander of the isle of Kent, with all the power and authority upon the said island according to his former commission granted unto him from Leonard Calvert, esq., late governor, bearing date at Kent, 18th of April, 1647; and further, "for special reasons him thereunto moving," he thereby suspended all power and authority from all the assistants or commissioners joined with the said captain Robert Vaughan in the aforesaid commission of 1647, (Mr. Philip Conner only excepted,)* and in their room constituted and appointed Mr. Nicholas Brown only, so that captain Vaughan, Mr. Philip Conner, and Mr. Nicholas Brown were to hear and determine all causes upon the said island according to the commission aforementioned. From this act of the governor in removing the former commissioners or justices of peace, appointed in 1647, it may be inferred, that great discontents with Mr. Greene's government or the lord Baltimore's proprietaryship had then subsisted in the isle of Kent, and that the governor, on his reconciliation with captain Vaughan, had found much cause of displeasure against the justices of peace of that island under the former commission.†

Question,
as to the
right of
forfeitures
for treason,
accruing
within a
manor.

About this time, towards the close of the year 1648, a proceeding took place in the provincial court held at St. Mary's, which, as it is explanatory of the nature of manors in Maryland, many of which lord Baltimore still continued to have laid out within his province, requires to be mentioned here in its proper place, although it has been before touched upon. As the real estates of several persons, engaged in the late rebellion, had been forfeited for their *treason*, particularly some of the estates held by the tenants of certain manors, which had been granted to Mr. Leonard Calvert, and which manors must have been now in the possession or occupation of his administratrix,—Miss Margaret Brent, the lady before mentioned, she, claiming these *forfeitures* as accruing to the estate of Mr. Leonard Calvert, the

* See before, p. 304.

† The documents relative to this quarrel between governor Greene and captain Vaughan are inserted in note (LXX.) at the end of this volume.

late lord or owner of these several manors, thought it most prudent to have the opinion of the provincial court, relative to that claim. Her application for that purpose is thus entered on our provincial records.

CHAP. V.
1648.

"December 7th, 1648.—Came Mrs. Margaret Brent, and required the opinion of the court touching the patent of Mr. Leonard Calvert, in the case of the tenements appertaining to the rebels within his manors ;* whether or no their forfeitures belonged to the lord of the manors.

"The resolution of the court was, that the said forfeitures did of right belong to the said lord of the manors, by virtue of his lordship's conditions of plantation, the said rights usually belonging to the lords of manors in England ; and that the words in the patent expressed, viz: all *commodities, advantages, emoluments, and hereditaments* whatsoever, (royal jurisdiction excepted,) included the same."†

The *conditions of plantation*, referred to in this record, were most probably those of November 10th, 1641, and not those last stated of 1648: inasmuch as the commissions last mentioned of this year, 1648, as before observed, either had not as yet arrived in the province, or they had not yet been published, so as to supersede either the former commissions or the former conditions of plantation. In that clause of the conditions of 1641, wherein his lordship directs the grants of manors, they were to "be conveyed by grant *with all such royalties and privileges as are usually belonging to manors in England.*"‡ But, as the governor and council, composing the provincial court at this time, were probably not lawyers, and seem here to have given an extra-judicial opinion without litigation, and therefore probably without argument before them, it may not be presumptuous to entertain doubts of the legality of their adjudication. For the reasons before stated,§ forfeitures for *treason* did not usually belong to the lords of manors in England ; but to the king. So that the court, assuming a mistaken principle as the groundwork of their decision, were led also into an erroneous construction of the

* There were three manors, all of them probably in St. Mary's county, which had been granted to Mr. Leonard Calvert, to wit, Trinity manor, St. Gabriel's, and St. Michael's. It is probable that the forfeitures above mentioned arose in some or all of these manors.

† "Council Proceedings from 1636 to 1657," p. 215.

‡ See these conditions, &c. at large, in note (XLIII.) before referred to, at the end of this volume.

§ See the latter part of note (IX.) before referred to, at the end of this volume.

CHAP. V. *patent* or patents, by which each of these respective manors were
 1648. granted to Mr. Leonard Calvert,* to wit, that the words—"all commodities, advantages," &c. included the right to forfeitures for treason; and omitted due attention to the *exception* therein,—
 "royal jurisdiction excepted," which reserved the *royal* right to forfeitures for treason.

Affairs of the mother country in relation to Maryland. The materials for our Provincial History now fail us for some months. In the mean time the chasm may be filled up by resorting to those interesting and important transactions, which had now taken place in the mother country. The efforts, which had been made in divers parts of England by several insurrections in behalf of the royal cause, during the year 1648, having been suppressed, and Cromwell having returned from Scotland, where, pursuing his before mentioned victory over the Scots, he had marched and had effectually settled every thing to his wishes, the army, under his command, now returning and approaching the environs of London, reassumed their dictatorial power over the parliament, and began again to prescribe to them such ordinances and acts as comported with Oliver's ambitious schemes. During his absence, indeed, in Scotland, and the existence of the late temporary insurrections, the Presbyterians, who still composed a majority of the members, had held up their heads, and had made something like an effort to negotiate with and restore the monarch to the throne. The independents, however, with Oliver at their head, and the army at their heels, took a very summary and effectual remedy to suppress these ebullitions of royalty exhibited by the Presbyterians. Two regiments of soldiers, under the command of a colonel *Pride*, on two several days, (the 6th and 7th of December, 1648,) environed the house of commons, arrested and imprisoned all the Presbyterian members, to the number of about two hundred, and completely *purged* the house, as they merrily termed it, of all its Presbyterian acidities. Oliver, and his military independents, were now completely masters of the English nation, with a subservient parliament of their own species to fetch and carry such ordinances and acts, as should be pointed out and dictated to them. This artful leader now began, if he

* The word "patent" here in the record could not refer to lord Baltimore's patent for the province, no such expression as above—"all commodities," &c. being in that patent; commonly called the charter of the province. The word "patent" must therefore refer to some one of Mr. Leonard Calvert's patents for his respective manors.

had not before, to entertain his ambitious schemes of his own personal elevation. What an awful and useful lesson is here taught to the friends of civil and political liberty! The most critical periods in the histories of republics are generally at the conclusion of a war, especially a civil one. A military chief, who happens to have been uncommonly successful, sees his way so clearly at such a period to the assumption of the supreme power of the State, that it is impossible for human nature to resist it. Cromwell was not made of that kind of conscientious stuff, as your Washington, to boggle and hesitate at schemes inconsistent with honour and rectitude. He was clogged with no such delicate principles. Masked with the vizar of religious hypocrisy, and backed with a well disciplined army of twenty thousand men, his vaulting ambition saw no impediments to a very sure leap to the throne. The dethronement of the monarch became necessary to effectuate this, and no means to accomplish that desirable incident appeared so secure as the cutting off his head. Through the instigation of Cromwell the army demanded, that the king should be brought to justice; and accordingly, within a little more than a month he was tried, condemned, and executed. The English constitution, so often the theme of foreign panegyrists, was now completely abolished; and the remaining members of the house of commons, consisting entirely of independents and anabaptists, assuming the name of *parliament*, voted, and afterwards enacted, "that the kingly office should be abolished as unnecessary, burdensome, and dangerous, and that the state should be governed by the representatives of the people in a house of commons without king or lords." They also made choice of thirty-nine persons to form a *council of state*, or an executive council, for the administration of public affairs under the parliament.

These were the important changes and revolutions of affairs, which had taken place in the mother country, prior to that period when our provincial records again afford us some grounds on which we may proceed. The first subsequent transactions of any importance on record commence with the opening of the next session of assembly, on the second of April, 1649; by which time the before mentioned transactions in England might have been known in Maryland, and have had some operation in producing those changes within the province, which we are now about to recite. Whether this session was an adjournment or prorogation of the last, which ended on the fourth of March,

Session of
Assembly.
1649.

CHAP. V. 1647-8, or whether it was a new assembly called by summons, 1649. agreeably to the common usage heretofore practised in the province, we are not enabled to determine, as no journal of the proceedings thereof are extant upon record: except the laws which were now passed at this session. Neither are we enabled to determine, when the new organization of the government, intended by the last mentioned preceding commissions of 1648, was commenced and carried into execution, for no *memoranda* or other record of the qualification, by oath, of governor Stone or the other officers thereby appointed, now appears. Yet it seems to be certain, that governor Stone was now, at the commencement of this session, acting in his capacity of lieutenant general or governor of the province; so that the assembly was most probably convened by him or under his authority. Among the "council proceedings" a *memorandum* is still on record, relative to all the records of the province, which were properly to be in the custody of the *secretary* of the province, that seems to throw some light on the obscurity of this period. It is as follows:—

Anno, 1649, memorandum, That I, Thomas Hatton, by virtue of my commission from the right honourable the lord Baltimore, of being his lordship's secretary of the province, did, upon the 2d day of this present month, being the first day of the assembly, receive into my custody this book of entries, before the governor and council then met together; this being the 9th day of April, anno domini, 1649.

"16 April, Mr. William Bretton, with his own hand in the house of assembly, delivered to me *this book*, and another lesser book with a parchment cover, divers of the leaves thereof being cut or torn out, and many of them being lost, and much worn out and defaced, together with divers other papers and writings bound together in a bundle: And then, upon the delivery of them, made oath, That these were all the books of record, papers, draughts, precedents and other writings that he had, could come by, or know of within this province, which belonged to the secretary or register of this province, their office or officers: except some warrants, and some draughts of Mr. Hill's time, and some few other papers of little consequence; which he promised to deliver me ere long.

"Testor, THOMAS HATTON, *Secr.*""*

* Taken from the book in the council chamber entitled "Council Proceedings from 1636 to 1657," p. 219.—See it also in Bacon's *Preface* to his collection of the Laws of Maryland.

It may be remarked on this document, that, although it now CHAP. V.
1649. appears entire, as above, in one record book, in the council chamber, yet the two paragraphs thereof were evidently made at two different times;—the first on the second day of April, and the other on the sixteenth; and moreover relate to two different books delivered at the two different times therein specified; and must have been therefore originally so distinctly entered in the two distinct books so distinctly delivered, most probably in the first and blank pages of each of them. It is to be inferred also from these *memoranda*, that the two oldest books now extant, relative to the first proceedings of the government of the province, to wit, the one entitled, “council proceedings from 1636 to 1657,” and the other “assembly proceedings from 1637 to 1658,” are only fair transcripts from those books now delivered to Mr. Hatton; and that the former is a copy of that delivered on the second of April, in the presence of or “before the governor and council then met together,” and the latter, of that delivered on the sixteenth of April in the house of assembly.

We may fairly infer also, from the delivery of these records to Mr. Hatton at these specified times, particularly from that delivered on the *second* day of April, “being the first day of the assembly,” that Mr. Hatton had not entered on the duties of his office, as secretary of the province, prior to that day; which carries with it some presumption also, that the whole of the new organization of the government had been purposely postponed to this first day of the sitting of the assembly—the second of April, when we may suppose governor Stone, the new members of the council, and the other officers now invested with new commissions, qualified themselves for their respective offices by taking the several oaths prescribed by each, as before stated.

As no journal of the proceedings of this session now remains, we are left to judge of those proceedings only from the legislative acts or laws of this assembly still extant on record. It appears, from the enacting style of these laws, viz.—“By the lord proprietary, with the assent and approbation of the *upper* and *lower* houses,” &c., that the assembly was now, at this session, for the first time, actually divided into two distinct and separate houses, and sat, as we may suppose, in two distinct and separate apartments or buildings. But how the same was effected does not appear, there being no record extant of any *proceedings* of this assembly, except those of their last day of sitting to receive

CHAP. V. the report of the committee for settling the public charge, and of
 1649. a letter from the assembly to his lordship.* It will be recollected, that a motion was made by Mr. Robert Vaughan, (then a burgess for the isle of Kent,) at the July session of 1642, "that the house of assembly might be separated, and the burgesses to be by themselves, and to have a negative;" which motion failed on account of the opposition to it by the governor—Mr. Leonard Calvert.† Mr. Vaughan was now one of the council, and consequently a member of the *upper* house; but whether the motion for the same purpose was now renewed by him, or by some other person, we are no where informed. It appears to have been the opinion of the very judicious compiler of the Laws of Maryland, just referred to, that the adoption of this measure at this session, "was probably *at the desire of the freemen*, from their former application to that purpose," through Mr. Vaughan. It may be remarked, however, that there was in this measure at this time some small deviation from the proceedings of the *Puritans* in the mother country. There they had voted, on the fifth of February preceding, within a few days after they had put the king to death, that "a *house of lords* was useless and dangerous," and "that the state should be governed by the representatives of the people in a *house of commons* without king or lords." It must be confessed, that our provincial politicians shewed greater wisdom in the adoption, than the English parliamentarians did in the abolition, of those wholesome "checks and balances" of the old English constitution; as our independent states have, by their general conduct in the formation of their governments, clearly demonstrated.

Remarks
 on the acts
 of this ses-
 sion.

We may now proceed to a short review of the several most important acts of this session, as throwing considerable light on our provincial history at this era. The first of them entitled, "an act concerning religion," seems particularly to attract attention, and has furnished to many writers, even of modern date, very plausible grounds for eulogium on the first Roman Catholic settlers of Maryland. There is, however, much to blame as well as to commend, when we impartially examine its different parts. The preamble of it sets forth rather a questionable principle. "Forasmuch as in a well governed and christian commonwealth matters concerning religion and the honour of God

* So stated by Mr. Bacon, in his Collection of the Laws of Maryland.

† See before, p. 216.

ought in the first place to be taken into serious consideration and endeavoured to be *settled*, Be it therefore ordained and enacted," &c. This goes far in contending for the constitutional power in the legislature to erect, by laws made for the purpose, an *established* religion of the state; and accordingly we find, from the perusal of the history of these times, that nothing was further from the thoughts of either the *Puritans* or *Roman Catholics*, than that men should be allowed to entertain what religious opinions they thought proper. They were both for destroying the established religion or Church of England, and setting up in its stead, not a general toleration of all religious opinions, but their own sect or system, and then to put down by force all others. The principle should be in every "well governed commonwealth," not to legislate upon *religion* at all, not even for the incorporation of any religious sect whatever; and then only can *religious liberty* be said to exist.*

The first section of it contains a horrible disproportion between the crime and the punishment. To punish *blasphemy* with *death* and confiscation of property, would be now deemed such an outrage on religious liberty, that, beyond a doubt, such a law could not at this day be executed in Maryland.

The second section is in some degree liable to the same objection just made to the first, although certainly the disproportion between the crime and the punishment is not so great. The alternative punishment—*whipping*, in case of non-ability to pay the fine, would not comport with our democratic principle of legislation; which is, in all cases to favour the poor man. It would be improper to pass over unnoticed in this place a frivolous objection, formerly made to this section of this act of assembly, within a year or two after its passage; and it will be best stated in the words of the author, from whose book or pamphlet the fact is derived.†

"This act was passed by a general assembly in Maryland, in April, 1649, and assented unto by the lord Baltimore in 1650;

* Prior to any further remarks on this act, the reader is referred to it at large in note (LXXI.) at the end of this volume.

† As we are now about to enter into the statement of several facts, the knowledge of which is more particularly derived from two very old pamphlets, printed and published in England as far back as in the year 1655, (MSS. copies of which are now in my possession,) and as the citation of them will be frequently necessary, it will be proper to give in this place a short account of them. After the civil war, battle and bloodshed, (which will be hereafter related,) had taken place in the province in the year 1654, between the friends of lord Balti-

CHAP. V. and the intent of it being to prevent any disgusts between those
 1649. of different judgments in religion there, it was thought necessary to insert that clause in it concerning the *Virgin Mary*, of whom some otherwise might perhaps speake reproachfully, to the offence of others. And in the time of the long parliament when the differences between the lord *Baltimore* and colonell *Samuel Matthews*, as agent for the colony of *Virginia*, were depending before a committee of that parliament for the navy; that clause in the sayd law, concerning the *Virgin Mary*, was at that committee objected as an exception against his lordship; whereupon a worthy member of the sayd committee stood up and sayd, that he wondered that any such exception should be taken against his lordship; for (says hee) doth not the scripture say, that all generations shall call her blessed? * and the committee insisted no more on that exception."

That adoration may with propriety be paid to the *Virgin Mary*, seems to have been always a *tenet* of the Roman Catholics; and this motion in the committee of parliament is a confirmation of the remark, which we have just before made, that the *Puritans* had not the least intention of granting religious toleration to the Roman Catholics, though it is certain that some good Catholics were beguiled into that opinion and acted accordingly with the Puritans in the destruction of the church of England.

more and the *Puritans*, who had settled at Providence, now Ann Arundel county, as before stated, each party became anxious to justify themselves in the view of the *lord protector*, (Oliver Cromwell,) and the then ruling powers of England. Accordingly a pamphlet was published in London, in the year 1655, by one Leonard Strong, in behalf of the Puritans, entitled,—“*Babylon’s Fall in Maryland: a fair warning to lord Baltimore; or a relation of an assault made by divers Papists, and popish officers of the lord Baltimore’s against the Protestants in Maryland, to whom God gave a great victory against a greater force of souldiers and armed men, who came to destroy them.*—Published by *Leonard Strong*, agent for the people of Providence in Maryland.—Printed for the author, 1655.”—The other pamphlet, purporting to be an answer to the former, was entitled, “a just and clear refutation of a false and scandalous pamphlet, entitled *Babylon’s Fall in Maryland, &c.* And a true discovery of certain strange and inhumane proceedings of some ungrateful people in Maryland towards those who formerly preserved them in time of their greatest distresse. To which is added a law in Maryland concerning religion, and a declaration concerning the same. By *John Langford*, gentleman, servant to the lord Baltimore.—Hee that is first in his owne cause seemeth just, but his neighbour commeth and searcheth him. *Prov. 18, 17.*—Whose hatred is covered by deceit, his wickednesse shall be shewed before the whole congregation. *Prov. 26, 26.*—London, printed for the author, 1655.” The quotation here inserted above in the text is from the pamphlet last stated.

* The author here cites in the margin, “*Lu. 1. 48.*”

By the third section,—“Persons reproaching any other within the province by the name or denomination of heretic, schismatic, idolater, puritan, independent, presbyterian, popish priest, jesuit, jesuited papist, Lutherean, Calvinist, anabaptist, Brownist, anti-nomian, barronist, round-head, separatist, or any other name or term,* in a reproachful manner, relating to matter of religion, were to forfeit ten shillings sterling for each offence, one half to the person reproached, the other half to his lordship: or, in default of payment, *to be publicly whipped*, and suffer imprisonment, without bail or mainprise, until the offender shall satisfy the party reproached by *asking* him or her respectively *forgiveness* publicly for such offence before the chief officer or magistrate of the town or place where the offence shall be given.” To judge correctly of the propriety of such a law, as this third section comprises, the supposition should be made, that there existed a law of Maryland at this day, which imposed a penalty precisely similar to that just rehearsed, especially the whipping and asking forgiveness, on every person within the state who should reproach another by the name or denomination of whig or tory, federalist or anti-federalist, aristocrat or democrat, monarchist or jacobin;—what would be its operation and effect? It would probably be remarked, that it would be an assumption of intolerable despotism to legislate so minutely on human actions, or rather on *words* or language.

The fourth section, providing against a breach of the “Sabbath or Lord’s day, called Sunday,” under a penalty of *whipping* for a repetition of the offence, demonstrates that *puritanism* was now strongly diffusing both its sentiments and language into the province. The terms—“Sabbath, or Lord’s day,” were never in common use among Roman Catholics, nor indeed with members of the church of England;† and dancing parties, so common in Catholic countries as an innocent amusement on a Sunday evening,

* In reading over this list of hard *names*, we cannot but be forcibly reminded of *Buller’s* inimitable description of these times in the opening of his poem, entitled, *Hudibras*.

“When *hard words*, jealousies, and fears,
Set folks together by the ears,
And made them fight, like mad or drunk,
For dame *religion*, as for punk.”

† In New England, about this time, a religious scruple prevailed against calling the first day of the week Sunday; on account of its supposed idolatrous origin; and the “Sabbath, or the Lord’s day,” was the common phrase.—See Hutchinson’s Hist. of Massachusetts, vol. i. p. 377.

CHAP. V. would assuredly have been considered by the Puritans as "uncivil and disorderly recreation;" and therefore within this legislative prohibition.
1649.

The fifth and last clause of this act, (deserving attention,) against "the inforcing of the conscience in matter of religion," is that part of it, which has principally attracted notice, and occasioned much eulogium on a Catholic government for this example of its liberality and disposition to toleration in matters of religion. But, from all the circumstances herein before mentioned, if this law was one of those "selected" by the assembly out of the "sixteen in number," as before mentioned, sent in by his lordship, as it would appear to have been, the credit, to be derived from the liberality of this clause, is certainly due to lord Baltimore himself, and not to the Roman Catholic inhabitants of the province generally. There are moreover strong grounds to believe, that the majority of the members of this assembly of 1649 were *Protestants*, if not Protestants of the *puritanic* order. It has been before stated, that governor Stone and a majority of the members of the council were Protestants. There are strong reasons for a supposition that a majority of the members of the other house of assembly were Protestants also; inasmuch as they certainly were at the next session of 1650. We may then fairly presume, that the governor and council sitting with the lower house at this session, (for they were not yet divided into two houses as at the next session,) made a majority of Protestants. The acts of this assembly, therefore, were the legislative proceedings of *Protestants*; but, although they rejected the body of laws sent in by lord Baltimore, as will presently be seen, yet they themselves acknowledge, that they "selected" out of that body, many of the laws which they passed at this session; and from the "certificate" of the Protestants, made in 1650, which will be hereafter stated, it may be inferred, that the "act concerning religion" was, in substance at least, one of those sent in by his lordship. The remarkable conformity also of this act to the commission and oath of the lieutenant general prescribed by his lordship, as before stated, with respect to a general toleration of all sects of christians, contributes to corroborate the supposition, that this remarkable act of assembly was *initiated* by the lord Baltimore himself; and, as it emanated originally from him, so ought he personally to have the greatest credit of it, whatever his motives for it might have been. The

error, (as it appears to be,) of a learned annalist,* where he says, CHAP. V.
1649. in his encomium on this act, that this assembly of 1649 was “composed chiefly of Roman Catholics,” has propagated the opinion, generally adopted, that this act of religious toleration proceeded from a Catholic government; an opinion certainly incorrect as to those who now administered the *Maryland* government, since unquestionably the governor and most of the council were Protestants, (of the old church of England perhaps,) and, in all probability, a majority of the assembly were so, with some few Puritans mixed with them.† The act of assembly may be said, indeed, to have been a political measure of a Roman Catholic nobleman, and so far the Roman Catholics are entitled to all the credit which may accrue to them from this measure of an individual of their sect. But, without the slightest endeavour to detract from the personal merit of Cecilius, lord Baltimore, it may be safely maintained, that the history of affairs throughout the British empire in Europe, at this period of time, clearly demonstrates, that this measure of general religious toleration, now adopted by his lordship, flowed rather from a prudent policy than any personal disposition to a general religious toleration. The Catholics throughout England and Ireland were evidently now endeavouring to make their peace with the Puritans, who held the reins of power. Even good church of England-men were daily becoming converts to them, or temporising; and these fanatics were now pouring their members, like an inundation, throughout every the remotest branch of the British dominions. The lord proprietary had adopted, almost at the first commencement of the population of his province, the

* *Chalmers's Annals*, p. 218.

† While writing the above, (having just taken up a newspaper—the *National Intelligencer* of November 12th, 1816,) I have accidentally perused therein an account of a speech of a Mr. O'Conner at a “Catholic aggregate meeting,” then lately held at Cork in Ireland, wherein the orator indulges himself, as usual, with many rhetorical flourishes on the British persecutions of the Irish Catholics, and by way of proving the general disposition of Roman Catholics to religious toleration, when they are in power, adduces the example of the early Roman Catholic government of *Maryland*. How far this was really the case, has been herein stated above. It is essential to the utility of history, that such an important measure as this should be set right, and the world no longer imposed upon. For evidence of the disposition of Roman Catholics, as a *sect*, to grant toleration to other religious sects, the reader may be referred to the history of Ireland throughout the seventeenth century, and, indeed, to that of the greater part of Europe under Roman Catholic government, during that period, except France, where philosophy and that pure system of religion denominated Deism had disarmed or mitigated the horrible powers of an *inquisitorial* tribunal.

CHAP. V. measure of admitting persons of every sect, without discrimination, to become inhabitants of his province; and it was not, therefore, now possible for him to avoid its necessary consequences. The government of Virginia was now also ferreting out from their hiding places all the Puritans, who lurked within that ancient dominion. Maryland, unfortunately for his lordship, became an asylum for most of them. The inhabitants of this province now formed a heterodox mixture of almost every christian sect. To keep peace among them a general toleration was obviously the only prudential measure to be adopted.

The next act of this session, in the order in which they have been arranged by the best compiler of the laws of Maryland,* is that entitled "an act for punishment of such as shall counterfeit the lord proprietary's, or his heirs' lords and proprietaries of this province, great seal of this province." Such an act seems to have been necessarily required by the introduction of a new great seal of the province, instead of the one purloined by Ingle and Clayborne; and which new seal had been sent in by the lord Baltimore as before mentioned and described.

The next act, entitled "an act concerning purchasing lands from the *Indians*," is a law, as to its principle, of general utility even at this day. The principle, upon which it was founded, seems to have been adopted by the United States in the disposition of all the territories conquered or purchased by them from the Indians. For every or any individual to have been allowed to purchase lands from the Indians wherever and for whatever price they chose, would have been a liberty of most mischievous policy. And this consideration, as before observed, at once demonstrates the futility of Clayborne's claim to the isle of Kent. He wishes to retain the possession of it, under a mere purchase from the Indians, without the expense or trouble of obtaining a patent for it from the representative of the nation—the monarch, who had, as congress has under our republic, the sole *right of purchase* from these aborigines of the country. The substance of the act, (being abridged and condensed,†) is as follows:—"The preamble recites, that divers persons have heretofore pur-

* The laws of this session remain recorded in different books and in different orders of succession to each other. As no journal remains, there is no possibility of determining which were first introduced into the house; nor is it material, each of them having relation to a different subject. They were all passed on the same day, to wit, on the 21st of April, the last day of the session; and are here commented upon in the order in which Mr. Bacon has placed them.

† As it is in Mr. Bacon's Collection of the Laws of Maryland.

chased or accepted of lands, &c., from the *Indians*, and made use of and possessed the same, without any lawful title and authority derived from the lord proprietary, neglecting also to take out grants from his lordship, under the great seal, for such lands as have been due to them by virtue of his lordship's conditions of plantations, or other warrant from his lordship, which proceedings are not only very great contempts and prejudice to his lordship's dignity and rights, but also of such dangerous consequence, if not timely prevented, that they may hereafter bring a great confusion in the government and public peace of this province. *Be it therefore enacted by the lord proprietary, with the assent and approbation of the upper and lower house of this assembly, &c.*—(1.) All purchases or acquisitions whatsoever, of any lands, &c., within this province, made or to be made, from any person whatsoever, not deriving at the same time a lawful title thereto, by, from or under his lordship or his heirs, under the great seal, shall be void and null.—(2.) It shall be lawful for his lordship to enter upon, seize, possess, and dispose of any such lands, &c., so purchased or acquired from any *Indian* or other, at his will and pleasure, unless such purchaser, at the time of such purchase or acquisition, have some lawful right or title to such lands, &c., by some grant from his lordship, &c., under the great seal.”

It is not impossible, but that these attempts to purchase lands within the province from the *Indians* had been lately made, under a supposition, that from the late important political changes, which had recently taken place both in England and Maryland, there was a probability, that lord Baltimore would in a very short time be deprived of all right of propriety in his province, and consequently of the right of making grants of lands therein. We shall see hereafter, that some such conjectures were now afloat in both Virginia and Maryland. Apprehensions of such an event must have dictated to lord Baltimore's friends within the province, or have caused them to assent to such a very severe law as the act of assembly of this session, next in order after that just mentioned, entitled, “an act for the punishment of certain offences against the peace and safety of the province.” By this act, “all mutinous and *seditionous* speeches, practices, or attempts *without force*, tending to divert the obedience of the people from the lord proprietary of this province, or his heirs, or the governor under him for the time being, and proved by two sworn witnesses, shall be liable to be punished with imprisonment

CHAP. V. during pleasure, not exceeding one whole year, fine, banishment,
 1649. boaring of the tongue, slitting of the nose, cutting off one or both ears, whipping, branding with a red hot iron in the hands or forehead ; any one or more of these as the provincial court shall think fit.—(2.) All mutinous or *rebellious* speeches, practices, or attempts *with force*, either against the person of the lord proprietary now being or his heirs, or of his or their governor of the province for the time being in his or their absence out of the province, or against any the forts, dwelling houses, or guards, provided for the safety of their or any of their persons, or *for the publishing, establishing, or advancing any other right or title to the propriety or dominion of this province than the right or title of him the said lord baron of Baltimore* ;—and all accessaries (*afore* such force, and proved by two sufficient witnesses as aforesaid,) to such speech, practice, or attempt, shall be liable to be punished by loss of hand, or *by the paines of death*, and confiscation of all lands, goods and chattels within the province, banishment, imprisonment during life ; any one or more of these as the provincial court shall adjudge ; and all accessaries *after* to such speeches, practices, or attempts (with force) shall be liable to be punished in such manner as in that clause which is provided for mutinous speeches and practices *without force*.”

It must be allowed, that this act of assembly armed the judiciary authority of the province with an extensive power ; but we must suppose, that none of these severe punishments could have been inflicted but by the regular intervention of a trial by jury and legal testimony. The proprietary government of the province was now in the most imminent danger ; and if that was to be considered as necessarily confounded with *the safety of the people*, this *supreme law* might have reasonably dictated such a harsh legislative act. Inasmuch as the forms of law and judicial proceedings were still preserved, the act of assembly admits of stronger justification than the extraordinary and *summary* powers with which our *councils of safety* in Maryland, at the time of our revolution, were armed with, or than our modern proclamations of martial law and occasional suspension of the writ of *habeas corpus* ; or, in the worst sense of it, may be placed upon an equality with that notorious Maryland act of assembly of 1777, “to punish certain crimes and misdemeanors and to prevent the growth of toryism.”

The next act, deserving notice, is that entitled, “an act touch-

ing Indians." The cause of making this act was, according to the preamble thereof, "to the end that no breach of peace may happen betwixt the neighbouring Indians and the inhabitants of this province." By this law it was made felony, punishable with death, (though without forfeiture of estate,) "to take, entice, surprise, transport, or sell any *friend* Indian." From this it would appear, that a species of the offence called *kidnapping*, in relation to Indians, must have had some existence at this time within the province. But it is difficult to conceive, how this offence could have prevailed to any great degree; especially if such Indians, so "taken" and "surprised," were "transported" and "sold" out of the province as *slaves*. The holding *Indians* in slavery had never attained to a general usage within the province, nor indeed, as it would appear, in any of the British colonies as yet planted.* If they were transported and sold at all, they must have been sent to some of the Spanish colonies in America, among whom, as we are informed, in some instances, the slavery of *Indians* was allowed. There was another clause in this act, which does not appear to have had much connection with the former part of it, though highly useful and necessary. A forfeiture of 1000 lb. of tobacco was to be imposed on any person, who should deliver any gun or ammunition to any *Indian*. This had been frequently provided against before.

The act of this session, entitled, "an act touching hogs, and marking of cattle, appears to have been the first act, relative to the subject, made in this province. The uncultivated and uninclosed state of the country must have dictated its utility. It was then the usage, as it is at this day, for neighbouring planters to turn their hogs and cattle promiscuously into the adjoining wood or forest. This necessarily produced a practice for every planter to affix some mark on the animal so turned out, in order to ascertain his ownership. This act, after imposing a

* There is, however, in this act of 1649, "touching Indians," a short clause, by way of *exception* to the tenor of the act, thus expressed:—"Andrew Ouzamazinah, being now *servant* to Mr. Fenwick, is hereby excepted from this law." But, supposing *Andrew* to have been an *Indian* in the *service* of Mr. Fenwick, it does not necessarily imply, that he was a *slave for life*. He might have *indentured* himself as a *servant* to him for years, for some cause not explained. Subsequent acts of assembly, however, demonstrate that the holding *Indians* in slavery within this province had been deemed lawful, but probably they must have been *Indian enemies* captured in lawful war. The above act against *kidnapping* *Indians*, was re-enacted in the act of 1715, ch. 16, sect. 6, which seems to be in force at this day. The act of 1717, ch. 13, seems to have recognized "*Indian slavery*," as then lawfully existing.

CHAP. V. heavy fine upon any person, who should "steal, wrongfully kill,
 1649. or carry away any marked swine of another man's," very properly added the following provision:—"And all the inhabitants of this province are required, by virtue of this act, to bring in their several marks of hogs and other cattle, and cause them to be recorded before Michaelmas next, upon peril of such censure as the governor and council then present or other judge shall think fit." This latter clause, though neglected, as it would appear, yet was deemed of so much importance, that "an order" was made by the assembly, at their next session, 1650, "for recording the mark of cattle and hogs," nearly in the same words as the preceding act, adding in a more particular manner, where such marks should be recorded, to wit: "in the secretary's office, or in the records of the county court where every such inhabitant liveth." The act, however, was subsequently repealed, and the order has become *obsolete*;* nor does it appear to have been ever revived, except by the act of 1692, ch. 32, which also was repealed. So wholesome an ordinance, relative to the internal police of the state, ought not to have been disused.

The next act also, entitled "an act for planting corn," was a renewal of that temporary policy frequently before resorted to in the early settlement of the province, in order to guard against a scarcity of food in the articles of bread stuff; a remedy borrowed from a similar police in Virginia. By this act, two acres of corn were to be planted and attended to for every *taxable* person on the plantation.

From documents annexed to this volume, consisting of a letter or address, by this present assembly now sitting, to the lord proprietary in England, and his reply thereto, it will be seen, that his lordship had (very improperly as it would appear to us at this day,) considered it as a great offence, that some of his personal property on his own plantation in St. Mary's county, consisting (as the assembly express it in their letter to his lordship) "of a few cattle, not above eleven or twelve cows at the most, of your lordship's known clear stock, and those conquered again to your lordship and taken from the unlawful possessor, should be distributed among those men, who had ventured their lives and estates in the defence, recovery, and preservation of your lordship's province." It has been before stated, that governor Calvert, while in Virginia, through want of other means,

* So stated by Mr. Bacon, in his Collection of the Laws of Maryland.

as we may presume, to pay the soldiers, whom he had enlisted and engaged to attend him in the recovery of the province, had expressly pledged to the soldiers, that "their hire and wages" should be payed out of the stock or personal property upon his lordship's plantation. In virtue of this engagement the above mentioned cattle of his lordship had been either sold for the payment of, or distributed among, the soldiers, as promised. This was done, most probably after the death of governor Calvert, by Miss Margaret Brent, who being appointed administratrix to the governor's private estate, was invested also, as has been before stated, with the same powers as governor Calvert had been, to manage his lordship's private estate as his attorney in fact. With Miss Brent's conduct in this respect his lordship, it seems, was excessively displeased, and expressed against her "bitter invectives." The assembly, however, in their spirited letter and address, generously defended her, and added, as a very strong reason, "that the soldiers would never have treated any other with that civility and respect; and, though they were even ready at several times to run into mutiny, yet she still pacified them." This does great honour to the character and understanding of this lady, and is one, among numerous examples to be found in history, where power lodged in female hands, if prudently exercised, is more readily obeyed and submitted to than the same would have been if administered by one of the other sex. There is a chivalrous disposition in citizens as well as soldiers, to obey the commands of women. His lordship, it seems, had expressed his displeasure at these proceedings in a *letter*, which had been most probably written by him to governor *Greene*, but which letter does not appear to be now extant, at least on our records. The assembly, however, animadvert upon this letter in the following spirited terms:—"Hereupon we cannot choose but wonder, why your lordship should write so tartly against the people, and how your lordship could suppose it fit and necessary, that those your loyal friends should be deprived by law of their dues for so great and good a service done and effected by them, and that it should be required at their hands, to *pay themselves a levy upon themselves*." A very just remark, if we suppose that these soldiers became afterwards the citizens upon whom the assessment, for the payment of the soldiers, was to be levied.

Previous mention of these few circumstances seems to have been necessary, in explanation of the next act of assembly of

CHAP. V. this session, entitled, "an act for the support of the lord proprietary;" which act seems to have been really and truly intended as a conciliatory earnest of the loyal and faithful desire of the people of the province to remain under his lordship's proprietary government, however exceptionable they deemed many parts of his late conduct towards them, upon which they animadverted in their letter to him at the close of this session in terms of rather keen resentment. The preamble of the act, however, is couched in the following very soothing language:—"That his lordship might better perceive the good will of the freemen, in complying with his lordship as far as their poor distracted condition could well bear, and to the end that he might be the better encouraged and enabled to protect them in their lives, liberties, and estates, "they gave, by this act, a custom to his lordship of 10s. per hundred on all tobaccos* shipped upon any *Dutch* vessel, and bound for any other port than his majesty's, for seven years, on forfeiture of all tobaccos chargeable with custom transported or attempted to be transported afore discharge had under the hand of the governor: one-half to be yearly employed towards satisfaction of all arrears and claims touching the late recovery and defence of the province, which should be brought into the secretary's office and made appear to be due, before the last day of March ensuing, &c. And an assessment also to be raised, on all the inhabitants for his lordship's use, for

* The reader will perceive, on perusing the letter of this assembly to his lordship at the close of this session, a considerable variance between the amount of the customs granted, as expressed in the act above mentioned, and their statement of it in that letter. Instead of "ten shillings per hundred on all tobaccos," as above mentioned, they state in their letter, that they had "passed their consent to a law, that his lordship and his heirs, for seven years, should have a custom of 10 *lb. of tobacco upon every hogshead* of tobacco laden upon any *Dutch* vessel," &c.—There is no other act of this session extant, to which they could have referred. The abridgment of this act, as above, was copied from Mr. Bacon's Collection of the Laws, and not from the record of the act at large: but he is uniformly so accurate, that it is supposed, safe reliance may be placed in almost every instance upon the correctness of his statements. It must be acknowledged, that "ten shillings per hundred," amounting to five pounds per hogshead, supposing the hogshead to have been of 1000 lb. weight, as usual formerly, is such an enormous imposition, as to induce us to suppose some mistake in the copying, either by Mr. Bacon or in making the present record of the act. Were it correct, it might well justify Mr. Chalmers, (*Annals*, p. 218,) where, following Mr. Bacon in his statement thereof, he remarks,—(intending it, perhaps, as a side blow against the American revolution,)—"Thus history seems to demonstrate, that rebellions, in superaddition to all other evils, never fail to entail *grievous burdens* on the unfortunate countries, which they had previously cursed."

replacing his lordship's former stock of cattle distributed and disposed towards the defence and preservation of the province," &c. CHAP. V.
1649.

This act affords strong evidence of the state of the foreign trade existing at this period of time between Maryland and Europe. The *Dutch* nation must have monopolized the greater portion of the tobacco trade now carried on, not only with Virginia but Maryland also. This, most probably, was occasioned in a great part by the perturbed state of England, so as to exclude regular communications with the mother country. To break up this trade, however, the parliament, in the course of the next year, (1650,) as we shall see, made that strong *ordinance*, "for prohibiting trade with Barbadoes, Virginia," &c., whereby they asserted and maintained their sovereign supremacy over the colonies; and in the succeeding year, (1651,) their celebrated navigation act.

It may be proper to mention in this place, that some doubts seem to have existed soon after the passage of this last mentioned act of assembly, how far the expression—"touching the late recovery and defence of the province,"—extended the "ar-rears and claims" to be satisfied by these customs. Accordingly, among the laws of the next session, (April, 1650,) "an explanation of a clause in the act of 1649," bearing date "April 29th, 1650," appears recorded; consisting first of a "declaration," (as it is called,) under the hands of ten gentlemen,* who were all most probably members of the last assembly, either of the upper or lower house, and who state therein, that they "verily believed, that the intention of the whole house then was, that these words in the laws, viz: 'Touching the late recovery and defence of the province, was only meant thereby, that those soldiers who came up in person with governor Calvert, deceased, out of Virginia, and those other, who were hired into the fort of St. Inigoe's for the defence and preservation of the province and government reassumed by him, and other just arrears incurred during the said time in that fort, should be satisfied by virtue

* The names of these gentlemen were—William Stone, (the present governor,) Thomas Greene (the late governor,) John Price, Cuthbert Fenwick, William Bretton, John Hill, Thomas Hatton, Robert Vaughan, George Manners, and Robert Clark. Of these, Messrs. Stone, Price, Hatton, and Vaughan were among the "*Protestant* inhabitants," who signed the *Protestant's* "declaration and certificate" but a few days before, on the 17th of April, which will be hereafter stated.

CHAP. V. of that act, and no others.” Annexed to this certificate, is the following order:—“29th April, *predict*. It is thought fit by 1649. both houses of this present assembly, that the act above mentioned be understood and judged upon according to the intentions expressed in the declaration above written.”

The remaining clause in this last mentioned act of 1649, relative to “an assessment, for replacing his lordship’s stock of cattle,” seems to have been a generous mode of reproaching his lordship for his sad complaints for the loss of his “few cattle, not above 11 or 12 cows;”—complaints, as they appear to us at this day, highly derogatory from his lordship’s elevated character. In pursuance of this disposition in the assembly to replace his lordship’s stock, there appears next in the list of laws of this session, “An order, touching the lord proprietary’s stock of cattle,” which prohibits them “from being carried out of the province, until his lordship’s pleasure be further known.”

The unceasing restlessness of the unfortunate aboriginal natives of our continent, at the manifest progress which Europeans were even then making in their territories, appears to have been a constant source of unceasing uneasiness also to the early settlers of Maryland. Since the first settlement of the province scarcely a session of assembly had past without some necessity of providing by law against the natural hostilities of the Indians. Accordingly, at this session also, there appears among the laws, a legislative “order,”* entitled, “an order of assembly for the defence of the province, as the present times will permit.” It seems to have been designed as a sort of militia law; whereby the inhabitants of every hundred in the province were to be assembled at stated times in the year, by an officer, to be appointed by the governor, called the *commander* of the hundred, for the purpose of making “such orders and ordinances as they shall judge meet and necessary for the defence of each particular hundred.” It regulates also, the mode of communicating any alarm, by what they call—“rounding,” that is, by the discharge of three or more muskets, which every master of a family was to answer

* Among the laws both of this and the next session, there occurs several with the title of “orders,” although they had really and truly all the force, operation, and extent of *acts* of assembly. These *orders* appear to have been expressly assented to by the freemen of both houses, and *concurred* in by the governor; and have, therefore, all the formalities of *acts* of the legislature. It appears to have been a loose mode of legislation practised by our early colonial legislators without much meaning, except perhaps that such order was meant only as a *temporary* expedient.

by the like number of guns, and so communicate the alarm through the hundred and from one hundred to another throughout the province. It further ordered, that no inhabitant should go out of the limits of the plantation where he resided, not even to church, without being well armed; and that every master of a family should provide sufficient arms and ammunition, not only for himself, but for his servants and sojourners at his house.*

CHAP. V.

1649.

Connected with the preceding order "for the defence of the province," the assembly subjoined another, entitled, "an order providing for the smith." As there has been some small mistake in the purport of this act of assembly, or order, by writers on the affairs of Maryland, at this period of time, it may be proper to state the preamble and substance of it. It recites, that "whereas there is an urgent and pressing necessity, as the present times require all the inhabitants of this province *to have their arms ready and well fixed*, upon all occasions and accidents, which may unexpectedly happen, which will not be effected with that willingness and so speedily as is required, unless the *smith* shall be in some means assured of his pay,"—the order then authorizes him to take a "specialty," or obligation, from all his employers, and that "he shall have execution granted him thereupon at such time as the specialty shall be due, and tobacco payable, for all *such arms so fixed* only without further trouble or judgment." An inference has been drawn from this, "that at this time the most common and useful arts must have made but small progress in the colony."† Although it is certain, that few of the "common and useful arts" had, as yet, made much progress in any of the British colonies in America at this early period, yet it must be observed, that the premises here did not warrant the above conclusion or remark. At this day, throughout these flourishing United States of America, an *armorer* is a kind of *smith* not commonly to be met with but in the larger cities.

* As this order, or rather act of assembly, gives an interesting portraiture of the situation of our early colonists, in relation to the Indians at that period of time, it is thought worth inserting herein at the end of this volume in note (LXXII.)

† This remark was originally made by Mr. *Chalmers*, (in his *Annals*, p. 221,) and copied from him by others. It is evident, that Mr. *Chalmers*, not being able to have recourse to the act at large, has made his inference from the *title* of it only, as it is in Mr. *Bacon's* Collection; and has supposed it to relate to a common *blacksmith*, necessary for repairing implements of agriculture; whereas it provided for an artist of a superior kind, commonly denominated a *white smith*, or more properly an *armorer*.

CHAP. V. We have thus traced nearly all the legislative acts of this session of assembly, and in the absence of other documents that would be useful in forming a judgment of the state of the colony in this year, have been obliged to be more minute in the detail of these acts than perhaps may be thought necessary.* There still remains, however, one more proceeding of this assembly deserving attention: and is more important, as it exhibits the *political* state of the colony at this time more clearly than any other document now on record. Although no journal of the session, as before observed, now exists, yet there still remains on record, prefixed to the document just referred to, the following *memorandum*.

The assembly's letter to the lord proprietary.

“Saturday, the 21st of April, 1649, being the last day and sessions-day of the assembly, a letter was read, to be sent to his lordship, and signed by the whole house present.—The governor dissolved the house.”

Whether this assembly was composed principally of Roman Catholics or Protestants, although, as before suggested, the probability seems to incline to the supposition, that the *majority* consisted of the latter, yet it must be acknowledged, that the spirit of this letter, which they now addressed to his lordship, was for the most part, respectful, wise, temperate and just. He had certainly given them some cause of displeasure in refusing a moderate compensation, at his own private loss, to the soldiers, who had accompanied his brother, and regained the province for him; and, perhaps also, in assuming again his old relinquished prerogative of *initiating* or propounding a *system* of laws to be adopted or rejected *in toto* by the assembly without amendment or alteration. He had also erred, (according to a principle of legislation now generally received, in multiplying *oaths*, of uncommon length, to be taken by his officers and the inhabitants of the province; and on this point, the forcible yet delicate request of the assembly deserves repetition.—“We do further humbly request your lordship, that hereafter such things, as your lordship may desire of us, may be done with as little *swearing* as conveniently may be; experience teaching us, that a great occasion is given to much perjury, when *swearing* becometh common. Forfeitures, perhaps, will be more efficacious to keep men

* Such extracts from the laws of this session of 1649, as have been herein inserted, were copied either from Mr. Bacon's Collection, or from the original books to which he has therein made reference.

honest than swearing. Oaths little prevail upon men of little conscience." On the subject of his "body of laws," sent in by him, after mildly setting forth their reasons for not accepting them altogether, but only selecting a few of them, they further thus express themselves.—"We do humbly request your lordship hereafter to send us no more such bodies of laws, which serve to little other end, than to fill our heads with suspicions, jealousies, and dislikes of that, which verily we understand not. Rather we shall desire your lordship to send *some short heads* of what is desired, and then we do assure your lordship of a most forward willingness in us to give your governor all just satisfaction, that can be thought reasonable, by us." It must be acknowledged, that this was the best and safest foundation, upon which his lordship's desired prerogative of propounding laws to his province, could have been placed.*

CHAP. V.
1649.

This letter, or address, was most probably transmitted to his lordship in England, soon after the rising of the assembly; for, we find, immediately succeeding it, as it now stands on the record, a paper entitled—"His lordship's declaration, *anno* 1649;" which, evidently from its contents, was meant as his lordship's reply to the assembly's letter; and, being without the date of any month, was probably written and sent soon after his lordship's receipt of the address, and within the present year. In this "declaration," or reply, his lordship after stating, that the unwillingness of the assembly to consent to his "body of laws" was occasioned chiefly, "as he was informed, and had much cause to believe, by the *subtle suggestions*" of some, who ought rather to have assisted in promoting a good correspondence, than in raising and cherishing any jealousies or discontents between him and the people, mentions, that the chiefest pretended "exceptions" against these laws were, as he was informed, contained in the "act of recognition," and in that for the oath of fidelity.† These "exceptions" or "subtle suggestions" arose from two expressions in these acts, to wit,—"*absolute lord and proprietary*," and "*royal jurisdiction*." These expressions, as his lordship states, were "stumbled at" by some of the assembly, who seemed to doubt, that the former words—"absolute lord and proprie-

His lord-
ship's re-
ply.

* See this "Letter" of the assembly at large in note (LXXIII.) at the end of this volume; to which is added his lordship's "Declaration" in reply thereto.

† From this we may infer, that two of the laws sent in by his lordship, were similar to, if not the same, in substance at least, as two under those titles passed at the subsequent session of assembly, of April, 1650, as will be hereafter seen.

CHAP. V. tary," would infer *a slavery in the people* of the province to lord
 1649. Baltimore, and that the latter words—"royal jurisdiction" exceeded the power intended to be given to him by his charter. His lordship then proceeds, after protesting against any such odious and sinister interpretation, and "calling God to witness that he had no intention to enslave the people there by them or any other way whatsoever," he appeals to the whole body of laws themselves to clear him from such intentions with all well meaning men; and then enumerates the several provisions of those acts sent in by him. There was provision made, he said, "for freedom of conscience: *—for freedom from taxes, except such as should be laid with the assembly's consent:—for freedom from martial law, but only in time of camp or garrison, and within such camp or garrison:—for freedom from being compelled in any kind to contribute to any war out of our said province without the consent of the assembly:—for freedom of trade with the Indians, upon reasonable conditions tending more to the public good and tranquility than to our advantage."† As to the other words, "royal jurisdiction," he declares, that it was intended by his charter, that he should have all such jurisdiction over his province as the bishops of Durham at any time heretofore *ever had in temporalls* within the county palatine of Durham in England, and that he had been satisfied, by learned counsel there, (in England,) and by such as were best read in antiquities, that the bishop of Durham, before Henry the eighth's time,‡ had and did exercise all "royal jurisdiction" within the said bishoprick or county palatine.

This opinion, relative to his lordship's proprietary powers over

* This seems to corroborate a suggestion herein before made, that the "act concerning religion," passed at the session of 1649, was one of those "selected" by the assembly from his lordship's body of laws.

† The most of these several subjects were subsequently provided for by several acts passed at the next session of April, 1650; and this circumstance seems to justify the inference, that those acts of assembly, of the session of 1650, thus providing for the same matters, as above stated by his lordship, and as comprehended in his body of laws, were actually "selected" from his lordship's system; as will appear more plainly when we come to the laws of the next session.

‡ In the book, in which "his lordship's declaration, *anno* 1649," now stands recorded, the expression is—"Henry the 7th, his time."—But as no statute is to be found in the *Statutes at large* in Henry the seventh's reign, which relates to the subject and statute of Henry the eighth, (27 *Hen.* 8, ch. 24,) is mentioned by all law writers, who treat upon the subject of *counties palatine*, as the only statute abridging those "royal jurisdictions," it is evident, that the numerical figure 7 in the record is erroneous and ought to have been 8.

his province, thus derived from "learned counsel" in England, and thus vouched by his lordship, is essentially necessary towards a clear understanding of the nature of his lordship's proprietary government. A county palatine (*comitatus palatinus*) is said to have been so called from the words *à comitatu et a palatio regis*; because the owner thereof had in that county *jura regalia*, as fully as the king had in his palace. He might pardon treason, murders, and felonies; he appointed all judges and justices of the peace; all writs and indictments ran in his name, as in other counties in the king's; and all offences were said to be done against his peace, and not, as in other places, *contra pacem domini regis*.* The county palatine of *Durham* is said to have been so by prescription or immemorial custom; or at least as old as the Norman conquest, and long prior to the statute of 27 *Hen. 8* c. 24, alluded to in his lordship's declaration, the bishop of *Durham* exercised therein all those prerogatives just mentioned.† But Henry the *eighth*, in his rage for reformation, after he had been provoked to it by the pope, sat about to reform not only *religious* institutions, but such *political* establishments as might possibly counteract his domineering temper. Accordingly, the statute of 27 *Hen. 8*, cap. 24, entitled, "An act for recontinuing liberties in the crown," was made; whereby the powers before mentioned of owners of counties palatine were abridged; though still, in the county palatine of *Durham*, (the only one remaining in the hands of a subject,—the bishop,) all writs are witnessed in his name, and all forfeitures for treason by the common law accrue to him.‡ This statute, however, seems to have been construed as not extending to the province of Maryland; because, as would appear, the expressions of the statute confine its operations to such "liberties" only as existed within the realm of England and principality of Wales. But it is probable, that this objection to his lordship's "royal jurisdiction," (of which every inhabitant must have been apprised before he colonized himself within the province,) ran deeper than what his lordship supposed, when he thought their objection was founded upon the supposition, that the assumption of "royal jurisdiction" by him, was contrary to his *charter*; whereas, there is greater probability, that this objection to his "royal jurisdiction" emanated from the same *republican spirit*, which had de-

* Coke's 4 *Inst.* 204-5, and 1 *Bl. Com.* 117.

† 1 *Bl. Com.* 116.

‡ 1 *Bl. Com.* 118.

CHAP. V. stroyed the monarchy in England, and, now diffusing itself into
 1649. the minds of some few Puritans within the province, began to exercise its animosities against every thing that looked like monarchy under a colonial government.*

The first
settlement
of the Pu-
ritans at
Provi-
dence, now
Annapolis.

This naturally leads our attention to another important incident, which occurred within the province during the present year. The Congregational (or Independent,) church, which had been privately founded in Virginia in the year 1642, as before stated,† and which had probably by secret meetings, notwithstanding the laws against them in Virginia, contrived to keep up a conventicle of their members for some years, had, in the year 1648, increased so much in numbers, (to one hundred and eighteen, as it is said,) as to attract the attention of the government of that colony to a more rigorous execution of the laws against them. Their conventicle in Virginia was therefore broke up, and the members of it, being driven out of that colony, were dispersed in different directions. The pastor of it (a Mr. Harrison,) went from thence to Boston in New England, in the latter end of the year 1648,‡ and the elder of it, (Mr. Durand,) unfortunately for lord Baltimore, took refuge in Maryland. With him, or soon after, a considerable number of the members of their church, among whom Mr. Richard Bennet, (afterwards governor of Virginia and one of the commissioners for reducing Maryland,) is said to have been one, emigrated to Maryland.§ This is stated by one of their own members, to have

* This seems to be corroborated by one of the reasons set forth by Mr. Leonard Strong, in his pamphlet, (before cited,) entitled, "Babylon's fall," &c. where he says,—“This oath,” (meaning the oath of fidelity herein before mentioned,) “was very scrupulously looked upon: first, in regard it bindes to acknowledge and be subject to a *royal jurisdiction* and *absolute dominion* of the lord Baltimore, and to defend it and him against all power whatsoever. This was thought far too high for him, being a subject, to exact upon such terms as it was exacted,” (that is, of having no grants of land without it,) “and too much unsuitable to the *present liberty*, which God had given the English subjects, from arbitrary and popish government; as the lord Baltimore’s government doth plainly appear to be.”

† P. 199.

‡ Hutchinson’s Hist. of Massachusetts, vol. 1, p. 147. Holmes’s Annals, vol. 1, p. 347.

§ Mr. Bennet is particularly mentioned by Mr. John Langford, in his Refutation of “Babylon’s fall,” &c., as one of the Puritans who emigrated to Maryland, but as Mr. Bennet is not mentioned in the records of Maryland until he came as a commissioner for the “reducement” thereof in 1652, it may rather be supposed, that he continued to be a *resident* of Virginia until that period and some time after. It is possible, however, that he might have assisted in conducting the Puritans from Virginia to Providence, (now Annapolis,) on their first coming there in the present year, 1649.

taken place in the year 1649,* but at what time of the year we are no where informed. Most probably they did not leave Virginia in a body, but gradually in small numbers in the course of the spring and summer of this year, 1649. It is expressly stated by the same last mentioned authority, that they were not invited into Maryland by governor *Stone*; but by a friend of the governor's,† that they were only "received and protected." These people seated themselves at a place by them called *Providence*, but afterwards *Anne Arundel*, most probably on or near the spot on which the city of *Annapolis* now stands. It is alleged by their advocate, (*Leonard Strong*, before cited,) that "an oath to the lord Baltimore was urged upon this people soon after their coming up,‡ which if they did not take, they must have no land nor abiding in the province." The "oath" here alluded to was the *oath of fidelity*, herein before stated, as prescribed by his lordship, and annexed to his "conditions of plantation" of 1648. The condition was—that "every adventurer or planter, that should have any land "granted to him by virtue of these conditions, before any grant should be delivered to him, should take the oath of fidelity to his lordship thereunto specified."§ This oath, besides the objection to it before stated, as to the words "royal jurisdiction," and "absolute dominion," "was exceedingly scrupled," (according to Mr. *Strong*,) "on another account, viz. that they must swear to uphold that government and those officers, who were sworn to countenance and uphold anti-Christ, in plain words expressed in the officer's oath—the Roman Catholic religion." But to this it was very forcibly replied by the author of the "Refutation," &c., that "there was nothing promised by my lord or captain *Stone* to them, but what was performed. *They were first acquainted by captain Stone before they came there*, with that oath of fidelity, which was to be taken by those who would have any land there from his lordship; nor had they any regret to the oath, till they were as much refreshed with their entertainment there, as the snake in the fable was with the countryman's breast; for which some of them are equally thankful. But it is now, it seems, thought, by some of these people, too much below them to take an oath to the lord proprietary of that province, though many *Protestants*, of much better quality, have taken it,

* Mr. *Leonard Strong*, in his "Babylon's fall," &c.

† Mr. *John Langford*, in his "Refutation," &c.

‡ This means coming up the bay of Chesapeake from Virginia.

§ See the note (LXIX.) before cited at the end of this volume.

CHAP. V. and, (which is more than can be hoped for from some of these
 1649. men,) kept it. As to the government there, *they knew it very well before they came thither*; and, if they had not liked it, they might have forborne coming or staying there; for they were never forced to either. The chief officers, under my lord, there, are *Protestants*. The jurisdiction exercised there by them is no other than what is warranted by his lordship's patent of that province, which gives him the power and privileges of a count palatine there, depending on the supreme authority of *England*, with power to make laws with the people's consent; without which powers and privileges his lordship would not have undertaken that plantation, and have been at so great a charge, and run so many hazards as he hath done for it." "There are none there sworn to uphold anti-Christ, as Mr. Strong falsely suggests; nor doth the oath of fidelity bind any man to maintain any other jurisdiction or dominion of my lord's, than what is granted by his patent. Though some of these people (it seems) thinke it unfit that my lord should have such a jurisdiction and dominion there, yet they, it seems, by their arrogant and insolent proceedings, thinke it fit for them to exercise farre more absolute jurisdiction and dominion there than my lord Baltimore ever did; nor are they contented with freedome for themselves of conscience, person and estate, (all of which are establisht to them by law there and enjoyed by them in as ample manner as ever any people did in any place in the world,) *unless they may have the liberty to debarr others from the like freedome*, and that they may domineere and doe what they please."

Although these people had thus, with the permission of the lord proprietary's government, seated themselves within the province of Maryland, in the year 1649, yet it does not appear, that they immediately thereon subjected themselves to the proprietary government at St. Mary's; inasmuch as no organization of any civil government under the authority of the lord proprietary appears to have taken place over them until the next year. The place or spot on the Severn—the peninsula or neck of land, whereon Annapolis now stands, where they are supposed to have first settled, was probably uninhabited by any Europeans before their arrival; and, thus secluded from the rest of the inhabitants of the province, it is probable, that, according to the usage of the congregational church of New England, a branch of which church they were, a sort of hierarchical government

was established by them, similar to that which had been practised by the first colonies of Plymouth, Massachusetts, and Connecticut. This sort of government, in the experience of those colonies just mentioned, was amply sufficient to supply the want of *civil* government, where the colony consisted of not much more than a hundred persons, as that of Providence in Maryland. No tyrant could be more arbitrary and despotic than a ruling elder of a congregational church. "No matters of weight or moment, whether of a *religious* or *civil* nature, were determined without their advice, and a formal reference to them. Matters offensive to the church, regularly, were first brought to the ruling elder in private, but might not otherwise be told to the church; and in church discipline, and indeed in some measure in their church service, he appears to have sat with the minister or teacher, and to have been co-ordinate with him in ecclesiastical power. They were considered, without doors, as men for advice and counsel in religious matters; they visited the sick, and *had a general inspection and oversight of the conduct of their brethren.*"* The energy of such a hierarchy may be evidently inferred. It not only took cognizance of the minutest deviation from moral deportment, but pervaded even the recesses of thought and mind. Obstinacy, idleness, and "light-carriage," were among the *civil* offences punishable under their abominable jurisprudence; which they professed to copy from the Mosaic code. As Mr. *Durand* was the elder of this church in Virginia, and came into Maryland with them, we may suppose him to have still continued in that capacity; and, being under such a government of their own, there could be no wonder that they never heartily assented to submit to the dominion of lord Baltimore, whom they considered as anti-Christ.

Neither does it appear, that any grants of lands or territory were made to these people, either collectively or individually, either prior to or subsequent to their arrival in Maryland, until the latter end of July, 1650, when also their settlement was organized as a county under a commander and commissioners of the peace, as the isle of Kent had been before. This circumstance, however, might possibly be attributed to several causes, which must have operated over the whole province for some years before this period. The loss of the great seal of the province, taken away by Ingle or Clayborne in 1644, had prevented

* Hutchinson's Hist. of Massachusetts, vol. 1, p. 374.

CHAP. V. any grants of lands from being made, at least for a considerable
1649. period of time, if not until the lord Baltimore had sent in a new seal, in the year 1648, as before mentioned. In the mean time, his lordship's power and authority over his province had been so shaken by Ingle's and Clayborne's rebellion, as it is called, as also by the great revolution of affairs in the mother country, that few "adventurers," it seems, would put themselves to the trouble or expense of taking up lands within the province, or at least of applying for *grants* thereof; especially as a strong conjecture was then afloat, that his lordship would infallibly be soon deprived of his province. These inferences may be obviously drawn, not only from the concomitant circumstances of the times, but from a proclamation issued by governor Stone, on the twelfth of April of this year, (1649,) wherein, after stating the loss of the great seal and his receipt of a new one, he requires all persons then resident within the province, or within the colony of Virginia, or elsewhere, who pretended any right to any lands due unto them within the province, by virtue of any conditions of plantation, or any other warrant, under his lordship's hand and seal at any time before the 17th of March then last past, should, on or before the times therein specified, come and make their right appear and demand grants; under the penalty of being refused their grants thereafter; his lordship having by such offers performed his *conditions* on his part. At the expiration of the time therein limited and specified, another proclamation was issued by the governor, bearing date the 30th of October of this year, 1649, giving further day to the persons described in the former proclamation, to wit, until the 25th of March then next following, for the purpose of obtaining grants, as before mentioned; assigning as a reason therefor, that divers of the inhabitants, who came within the preceding description, could not attend the surveys of their lands by the time limited, without great damage to be by them incurred by leaving their crops. Again also, on the 25th of March, 1650, another proclamation was issued, reciting the two former, giving further day, for the same purpose, to the same persons, until *Michaelmas* day next ensuing, (which was on the 29th day of September then next following,) assigning as a reason therefor, that the persons before described pretended, that they had no notice of the former proclamations. This proclamation now issued, on the said 25th of March, 1650, was however declared therein to be per-

empty notice, final and binding.* These proclamations strongly indicate the general opinion, which appears to have been now prevalent within the province, and perhaps elsewhere, of the precarious continuance of the lord proprietary's government over the province, and consequently of his right to make grants of lands therein. Planters and "adventurers," who had obtained warrants for tracts of land, probably flattered themselves, that by a little patience and neglect in taking out grants, they would speedily be relieved from any rents to be claimed by his lordship.

In connexion with this subject, the grants of lands, it will be proper to mention here, that his lordship had thought it proper to issue this year new conditions of plantation, bearing date the second day of July, 1649, with a commission of the same date annexed thereto; which conditions and commission must have arrived within the province towards the latter end of the summer of this year. The reasons, inducing his lordship to this measure, are not very apparent. The only one assigned in the commission is, that he was informed that the conditions of 1648, before stated, "were not like to give sufficient encouragement to many to adventure and plant there." The principal alterations seem to be in the increase of the size of the manors to be granted, to wit, three thousand acres for every thirty persons transported into the province, instead of two thousand for every twenty, and for a lesser number of persons one hundred acres for every individual instead of fifty, as by the former conditions of 1648. The obnoxious clause in the former, requiring every grantee, before he could have the benefit of a grant, to take the *oath of fidelity*, "hereunder specified," as expressed in the conditions, was still renewed or continued in these last conditions of 1649; but whether the oath now required was the same as that annexed to the former conditions, does not appear.†

In further illustration of the mode of colonizing the province at this period of time, some mention also may be made of a commission to Robert Brooke, esqr., bearing date September 20th, 1649; which commission, from the tenor of it, appears to have emanated immediately from his lordship in England,‡ and not

CHAP. V.
1649.
New conditions of plantation, and grants of lands.

* See these several proclamations at large in *Kilty's Landholder's Assistant*, p. 44, 51, 52.

† The conditions, and commission thereto annexed, of 1649, are recorded in "Council Proceedings from 1636 to 1657," p. 220, and are published at large in *Kilty's Landh. Assistant*, p. 45; but I did not perceive in the record any copy of an *oath of fidelity* "thereunder specified."

‡ The conditions of plantation, and commission thereto annexed, of July 2d, 1649, just before referred to, are both dated, as "given at *London*." From which

CHAP. V. issued, as usual, by his lieutenant general in the province. The
 1649. preamble of it recites, that—"Whereas our trusty and well beloved Robert Brooke, esqr. doth, this next summer's expedition,* intend to transport himself, his wife, eight sons, and family, and a great number of other persons, into our said province, &c., there to erect, make, and settle a considerable plantation," &c. The commission then proceeds,—“We appoint him the said Robert Brooke to be *commander* under us, &c., and our lieutenant, &c. of one whole *county* within our said province to be newly set forth, erected, &c., round about and next adjoining to the place he shall so settle and plant in. Provided, that the said county and place of settlement, &c. do not extend into or intrench upon any county or counties already nominated, &c.; and that the said county be allotted, set out, and apportioned, by such a quantity and number of miles, and such extent and circumference of ground, as other counties in our said province, or as counties in Virginia, are usually allotted and extended.”† The commission then “grants unto him all such honors, dignities, privileges, fees, perquisites, profits and immunities, as are belonging to the said place and office of *commander* of the said county, and as are used and enjoyed by other *commanders* of the county of the isle of Kent, or any other county in the said province.” In the same manner as in the commission before mentioned to Mr. Robert Vaughan, which constituted him commander of the isle of Kent, Mr. Brooke is authorised by his commission also, to choose six or more of the inhabitants of his said county, “with whom he shall advise and consult in all matters of importance,” to be appointed by the governor, conservators of the peace, &c., and with him to hear and determine all matters criminal, which may be heard and determined by justices of peace in England, and all *civil* causes (with the advice of the commissioners) not exceeding £10 sterling.‡ There appears to

we may infer, that his lordship, though a Roman Catholic, now stood so well with the *ruling powers* of England, after the death of the king, that he could with safety venture to reside in *London*.

* This must have meant, in the course of the summer of 1650.

† This seems to corroborate the suggestion, herein before made, that the *laying out of counties* within the province, was deemed rather within the *executive* powers of his lordship's “royal jurisdiction,” as count palatine of the province, than a subject of *legislative* interposition. Hence few of the counties within the province appear to have been erected by acts of assembly. This will more clearly appear, when we come to remark on the act of 1650, for the erection of *Ann-Arundel* county.

‡ “Council Proceedings from 1636 to 1657,” p. 232.

have been a separate commission to him also, of the same date, CHAP. V.
1649. to be one of the council in the province. As his name frequently occurs in subsequent documents, he must have emigrated to the province according to his agreement, and probably with his "eight sons" and family:—a handsome contribution from his own loins towards increasing the population of a new colony; and, from a subsequent document, (herein after to be stated,) it appears, that an order was made on the 21st of November, 1650, for erecting some part of the south side of Patuxent river into a county, by the name of Charles county, of which Mr. Brooke was made commander. He was probably a *Puritan*, of some note, if we may judge from the favour he found with them in the "reducement" of the province in the year 1652. It would seem from this, to have been lord Baltimore's policy at this time to get influential men of that party to settle in his province, under a hope that they would support his rights therein.

About this time governor Stone, having "occasion to be absent out of the province," most probably on a visit to his friends and estate in Northampton county, in Virginia, appointed, in virtue of his commission in such case, "Thomas Greene, esqr. to be lieutenant general in his absence, and in case of his refusal Mr. Thomas Hatton his lordship's secretary."* Mr. Greene, after he had been displaced from the office of governor, as has been before stated, was the first named councillor in the commission of the council. From the cautious expression above, "in case of his refusal," it might be inferred, that some doubts existed, whether he would serve as governor or not, after being dismissed without sufficient cause, as he might naturally suppose. It appears, however, that he consented to act, and his name, as lieutenant general of the province, is affixed to one or two public documents within a month or two afterwards; one of which, on account of its then interesting importance to every inhabitant of the province, requires to be mentioned.

Mr. Greene
appointed
governor,
in the ab-
sence of
governor
Stone.

Immediately or within a day or two after the late king Charles the first had been beheaded, (January 30th last,) the house of commons passed an act or ordinance,—“That no person whatsoever should presume to declare Charles Stuart, son of the late Charles, commonly called the prince of Wales, or any other person, to be king, or chief magistrate of England, or Ireland, or

Charles the
second
proclaimed
king.

* This appointment appears, as an entry on the proceedings of the council, and not by commission; and bears date September 20th, 1649, signed William Stone.—“Council Proceedings from 1636 to 1657,” p. 242.

CHAP. V. *of any dominions belonging thereunto*, by colour of inheritance,
 1649. succession, election, or any other claim whatsoever; and that whoever, contrary to this act, presume to proclaim, &c., should be deemed and adjudged a traytor, and suffer accordingly.”* The parliament of Scotland, however, proceeded somewhat differently, and within about a week after the death of the late king, (February 5th,) published a proclamation, wherein they proclaimed and declared, “that Charles, prince of Scotland and Wales, was, by the providence of God, and by the lawful right of undoubted succession, king of Great Britain, France, and Ireland;” but to this they added the following declaration by way of proviso:—“that before he be admitted to the exercise of his royal power, he shall give satisfaction to the kingdom, in those things that concern the security of religion, the unity betwixt the kingdoms, and the good and peace of this kingdom, according to the national covenant, and the solemn league and covenant.”† The commissioners of the kirk also made their declaration, “that he should, first sign the covenant, submit to the kirk’s censure, renounce the sins of his father’s house, and the iniquity of his mother.”‡ About the same time also, the prince of Wales, being then at the Hague and receiving the news of his father’s death, assumed the title of king. In Ireland, the marquis of Ormond, appointed by the late king lord lieutenant of that kingdom, and still continuing to act so, as soon as he received information of the late king’s death, immediately caused the prince of Wales to be proclaimed king, in all places subject to his authority; but, although the portion of Ireland over which he had authority seems to have been at this time but very confined, comprehending only the southern and eastern parts of Leinster, yet, in the acknowledgment of the royal succession in the prince of Wales, he seems to have been joined by all the moderate Roman Catholics of Munster and the southern parts of Ireland, who had been, ever since the year 1642, almost exclusively governed by

* Clarendon’s Hist. (fol. edit.) p. 570;—who calls it a *proclamation*; but in *Rapin’s Hist.* it is called an *act*. There was probably first an act passed by the house, as above, and then a proclamation published reciting that act. All *executive* as well as *legislative* business was now vested in the house of commons; at least, until they appointed the council of state.

† This “solemn league and covenant” expressly required the abolition of Episcopacy, the preservation of the church of Scotland, and the bringing the churches of all the three kingdoms to a *uniformity*; in other words, to establish *Presbyterianism*.

‡ The “iniquity of his mother,” we must suppose to have been *Popery*.

“the supreme council of the confederate Catholics of Ireland,” CHAP. V.
 who sat at Kilkenny, and with which council the marquis had 1649.
 then lately (in December, 1648,) concluded a treaty, very much to the satisfaction of the Catholics, as it well might be, for they were thereby left, not only to the free and secure exercise of their religion, but in some measure also under their own *civil* government. In the north, however, in Ulster, Owen O’Neale, who was said to have been a descendant of one of the old aboriginal Irish kings, kept a considerable portion of the more virulent Catholics under his banners; and, being encouraged therein, by the Pope’s nuncio—Rinuncini, who had, by his arrogant, positive and dictatorial manner, so offended the members of the supreme council, that they excluded him from any communication with them, this Irish chieftain of the north refused to acknowledge the prince of Wales as lawful successor; and, what exhibited a considerable want of principle in him, chose rather to join with colonel Michael Jones, who commanded in Dublin, under the English parliamentarians. He had, however, privately sent word to the king, that if he could be included in the act of oblivion, allowed liberty of conscience, employed in his majesty’s army, and *advanced to the dignity of an earl*, he would submit to acknowledge him as king. As the accommodation, which Jones had made with O’Neale, was not approved of by the English Puritans, O’Neale soon became disgusted with his new friends, and subsequently, before the expiration of this year, joined the rest of the Catholics of Ireland in the acknowledgment of the royal succession.*

Whether this conduct of the majority of the Irish Catholics had any influence on those of Maryland, we are not able positively to determine; but, it is probable, that, together with the loyalty of Virginia,† it might have had some influence in inducing Mr. *Greene*, who was now governor of Maryland, in the absence of governor Stone, and who appears to have been himself a Roman Catholic,‡ to cause the prince of Wales to be

* Leland’s Hist. of Ireland, vol. iii. pp. 290, 355.

† Although Virginia remained loyal to Charles the second after the death of his father, through the means of Sir William Berkeley’s influence, until it was “reduced” by the Puritans in 1652, yet I do not find it mentioned any where, that Charles the second was *proclaimed* there. It is most probable, however, that he was, inasmuch as he was acknowledged there to be king.

‡ Mr. *Greene*’s name is not in the list of *Protestants*, who subscribed the “declaration and certificate” of the 17th of April, 1650, hereafter stated; as it would most probably have been, had he been a *Protestant*,—he being then resident in the province, and one of the council.

CHAP. V. proclaimed in Maryland, "the undoubted rightful heir to all his father's dominions;"—which was done on the 15th of November of this year, 1649; and which was accompanied, as usual on such occasions, with another proclamation of the same date, "to further the common rejoicing of the inhabitants upon that occasion," as it is therein expressed, declaring a *general pardon* to all the inhabitants of the province for every offence before committed.* We shall see hereafter this bold proceeding of our governor, in the face of the parliamentary act of *treason* just stated, assigned as one of the strongest reasons, why Maryland required "reducement" more than any other colony, and why lord Baltimore, a Catholic, should be deprived of his government of the province. We may suppose, however, that our new colony of Puritans, just settled on the Severn, did not cause its shores to re-echo with their "rejoicings" on this occasion.

Governor Stone returns and convenes the assembly.

1650.

Our documents furnish us with no further occurrences of the year 1649, ending, according to new style, on the last day of December. But in January of the succeeding year, 1650, according to modern computation, governor Stone having returned to the province and resumed the functions of his office, thought it proper to convene the legislature of the Province. He, for that purpose, issued his proclamation, directed to the sheriff of St. Mary's county; which, as it unfolds in itself some of the constitutional principles, upon which a new modification of the provincial legislature was now about to take place at this session, may be properly inserted here at large.

"By the Lieutenant General, &c. of Maryland.

"PROCLAMATION.—Whereas the manner of summoning assemblies within this province is wholly left to the lord proprietary's discretion, these are therefore in his lordship's name, and according to his directions, to will and require you without delay to give notice to all the freemen of St. Mary's county, that they are to appear personally at Saint Mary's, the 2d day of April next, or else by proxies and delegates, so as no one freeman so appearing have above two proxies besides his own voice;† or, that forthwith after such notice the freemen of every hundred within the said county make choice of burgesses within

* See these proclamations at large in note (LXXIV.) at the end of this volume.

† The multiplicity of *proxies*, which some members brought at some of the preceding sessions of assembly, was repugnant to the practice of the house of lords in England, from which the privilege was copied; as has been before observed.

every such hundred, in manner following, viz.—that all the freemen of St. Clement's hundred, or the major part of them, make choice of one of the freemen of the said hundred for their burghess; that all the freemen of New-town hundred, or the major part of them, choose two or three of the freemen of that hundred for their burghesses; that all the freemen of St. George's hundred, or the major part of them, choose one or two of the freemen of that hundred for their burghess or burghesses; that all the freemen of Saint Mary's hundred, or the major part of them, choose one of the freemen of that hundred for their burghess;* that all the freemen of St. Inigoe's hundred, or the major part of them, choose one or two of the freemen of that hundred for their burghess or burghesses; and that all the freemen of St. Michael's hundred, or the major part of them, make choice of one or two of the freemen of that hundred for their burghess or burghesses; who are to assemble themselves at the time and place aforesaid, to adjudge and consult with the rest of the assembly then and there to meet, about the weighty affairs and for the public good of this province; Provided, that the freemen of every of the said hundreds, or the major part of them, respectively do agree together in one of the two ways of assembling themselves last mentioned; or otherwise they are all of them hereby required to appear personally, and not their proxies or delegates or burghesses, at the time and place, and for the purpose, before expressed; and for the Pur——,† to give them particular notice; and herein you are not to fail at your peril, as also to make return hereof at the time and place aforesaid.

* The freemen of St. Mary's hundred were rather discontented with this allotment of only one burghess; as appears from the following memorandum inserted in the record immediately after the above proclamation.—“The freemen of St. Mary's hundred earnestly request the governor to give them power of choosing two burghesses; alleging that hundred to be the ancientest hundred and the first seated within this province under his lordship's government; who granted their request and desire accordingly.”

† This abbreviation of a word is so in the record. But from all the circumstances before stated, and from that of two burghesses appearing in this assembly from *Providence*, the name of the new settlement on the Severn, it seems evident, that the word, thus partly inserted in the record, was intended for the word *Puritans*. It is true, that the act of assembly of the last session, entitled, “an act concerning religion,” forbade the “reproaching” any person, among other terms, with that of *Puritan*, under a severe penalty; but, it is possible, that as they could not be designated by any other term known at that day, and on this occasion not done “reproachfully,” the term was adopted in the abbreviated form as above. Thus *Quakers* are now commonly so called, without any *reproachful* meaning, although certainly the term in its origin was so considered.

CHAP. V. Given at St. Mary's, this 24th day of January, *anno domini*,
1649.

To the sheriff of St. Mary's } WILLIAM STONE."
county, his deputy or deputies. }

A duplicate of this proclamation is stated to have been sent to the sheriff of the isle of Kent county, with the slight alteration therein, that the freemen there were "to make choice of one, two or three burgesses," &c. The freemen, throughout the province, it seems, embraced the alternative prescribed in the proclamation, of choosing burgesses; instead of appearing personally, or by proxies. In St. Mary's county burgesses were chosen from the respective hundreds therein. From the isle of Kent one burgess only, but from Providence, two were sent.

On the appointed day for the meeting of the assembly, (the second of April,) the sheriff of St. Mary's county made his return, that "all and every of the freemen of St. Mary's county had been summoned according to the directions of the summons, and had made choice of the burgesses following for every hundred, viz," &c.* As no return had been made, on this first day of the session, nor any appearance of the freemen or burgesses, either from the isle of Kent or Providence, "the governor adjourned the house till Friday next being the fifth day of the same present month."

On the day of adjournment, (the fifth,) the burgesses from the isle of Kent and from Providence appeared. Mr. Robert Vaughan, the only burgess from the former place, made his own return, as follows: "This summons," (meaning probably the writing upon which the return was thus endorsed,) "was duly executed, and by virtue thereof I was by the major part of the freemen chosen burgess for the isle of Kent county, which I do certify in return thereof. Robert Vaughan." It will be recollected, that Mr. Vaughan was at this time also one of the council, as well as commander of the isle of Kent; so that some difficulty arises at this day, in reconciling his election as a burgess to the division of the assembly into two houses or branches. It will, however, be seen, when we come to the "act for settling this present assembly," that Mr. Vaughan was not considered as a member of the lower house but of the upper, that is, as one of

*The names of the burgesses of St. Mary's county are the same as those in the "act for settling this present assembly," hereafter stated, except that in the sheriff's schedule those names are respectively affixed to the several respective hundreds for which they were burgesses.

the council. The return from Providence was somewhat more singular, and was made by the governor himself; who, as it would seem, had gone up the bay, shortly before the meeting of the assembly, to visit the new colony at Providence; probably with a view of reconciling in an amicable way these refractory Puritans to the proprietary government. They consented to send burgesses to the assembly, and the governor's return thereof was as follows:—"By the lieutenant, &c. of Maryland. The freemen of that part of this province of Maryland, now called Providence, being by my appointment duly summoned to this present assembly, did unanimously make choice of Mr. Puddington and Mr. James Cox for their burgesses, I being there in person at that time."

CHAP. V.
1650.

On the next day, (April 6th,) the house, after choosing Mr. James Cox, speaker, and Mr. William Britton their clerk, proceeded to business. We may remark here, that this choice of a speaker seems to indicate strongly, how the politics, or rather the religion, of the house stood. Mr. James Cox, one of the members from Providence, was without doubt a zealous Puritan, or he would not probably have been chosen as a burgess by the inhabitants of that settlement. Neither can we suppose that he would have been now elected speaker of the house, unless a majority of the members had professed, or at least been inclined to, the same religious opinions, as he did. The house consisted of fourteen members, eight of whom subscribed their names, as *Protestants*, to the "declaration and certificate" of the 17th of this month, as will presently be seen. It seems to follow, therefore, that all of these *Protestants*, who made a majority in the house, approved of the religious sentiments of this zealous Puritan, whom they had thus elected as speaker.

Their proceedings.

The first business, which the house took up, was the adoption of an *oath* to be taken by every burgess; which proceeding seems to have emanated from the burgesses themselves, and not on the part of the governor and council, it being thus expressed: "Upon the motion and desire of the burgesses this day assembled, the governor appointed Mr. Secretary to draw two several oaths, one for the burgesses, and the other for the clerk; which was done." This seems to indicate the mode, in which the business of the legislature of the province was transacted in these early times. Some proof has been before offered herein of the extreme deficiency in literature among the first planters or

CHAP. V. settlers in Maryland;* as was the case indeed in those times, 1650. not only among those of New England and Virginia also, but even among the common people of Old England. It was probable, therefore, that very few of the fourteen members of the lower house, at this session, were capable of draughting a bill. The former secretary of the province, Mr. Lewger, appears to have been a lawyer by profession, and it is probable that the present secretary, Mr. Hatton, being sent from England by his lordship expressly for the office, was also of that profession, probably some English attorney. He was, therefore, the most proper person to prepare the form of oath required; and indeed it might possibly have been deemed at that time the appropriate duty of the secretary to prepare all legislative acts. These oaths, it seems, were very speedily prepared, and, on this same day, "were administered by Mr. Secretary to the clerk and burgesses then present; no one contradicting."†—Why *secrecy*, in relation to the debates and proceedings of this session, was enjoined by these oaths, no adequate cause is to be traced from the journal or records. The Catholic party in the house appear to have been discontented with it.

It appears from the journal, that on the first day of this session, (April 2d,) the house had made an order, for drawing "an act for settling this present assembly," as also for rules and orders to be observed. The act had been prepared and was now on this day (April 6th,) read, and from the urgency of the measure seems to have been passed immediately on its first reading. It is stated on the journal to have been "unanimously agreed

* Out of fifteen members of the assembly of 1639, seven of them made their marks, not being able to write their names.—See before, p. 99.

† An objection to the oath, which occurred in a subsequent part of the session, may perhaps render that of the burgesses worthy of perusal. It is therefore here inserted.—"I, A. B. do swear that I will faithfully and truly, according to my heart and conscience, to the best of my understanding and ability, without favour, affection, or self ends, advise, consult, and give my vote to all bills and other matters, wherein my advice or vote shall be required, during this assembly, wherein my chief end and aim shall be *the glory of God* in my endeavours for the advancement and promotion of the lord proprietary's just rights and privileges, and the public good of this province; and will also *keep secret* during this assembly all such matters and things as shall be acted and debated or consulted of in both or either houses of this present assembly, wherein *secrecy* shall be required or be requisite, so far as I may, and will not wittingly or willingly publish, divulge, or speak of the same to any person or persons whatsoever being no member of one of the said houses of assembly—So help me God."

The oath of the clerk contained the same clause of *secrecy*, in addition to the faithful performance of his office.

unto ; and signed and confirmed by the governor.” As this act constituted a *form of government* for the province, which existed from the time of its passage to the dissolution of the provincial government at the American revolution, it becomes a document of material import in the history of the province. It therefore claims a place in the body of this work.

“An act for settling of this present assembly.

“Be it enacted by the lord proprietary, with the advice and consent of the council and burgesses of this province now assembled, That the present assembly, during the continuance thereof, be held by way of upper and lower house, to sit in two distinct houses, apart, for the more convenient dispatch of the business therein to be consulted of: And that the governor and secretary, or any one or more of the council for the upper house; and Mr. John Hatch, Mr. Walter Beane, Mr. John Medley, Mr. William Broughe, Mr. Robert Robins, Mr. Francis Poesie, Mr. Philip Land,* Mr. Francis Brooke, Mr. Thomas Matthews, Mr. Thomas Sterman, Mr. George Manners, burgesses for St. Mary’s county, Mr. George Puddington, and Mr. James Cox, burgesses of that part of the county now called Providence, or any five or more of them, for the lower house, together with the clerk of that house for the time being, who shall from time to time assemble themselves, at the time and place to be by the governor (or whomsoever of the council he shall, by writing under his hand, depute for that purpose) from time to time appointed, during this present assembly, shall have the full power of, and be, two houses of assembly, to all intents and purposes. And all bills which shall be passed by the said two houses, or the major part of both of them, and enacted or ordained by the governor, shall be laws of the province, after publication thereof under the hand of the governor, and the great seal of the province, as fully, to all effects in law, as if they were advised and assented unto by all the freemen of the province personally.”†

Although the expression in the preceding act,—“during the continuance thereof,”—seems to intimate, that the arrangement of the “two houses” was to continue only “during the continuance” of this “present assembly,” yet it is certain, that this di-

*In the list of the members, as it is on the journal of the house, the name is *Philip Lane*.

†Copied from Mr. Bacon’s Collection of the laws of Maryland.

CHAP. V. vision of the legislature into two houses, the governor and council forming what was called the upper house, continued until the American revolution, with the exception, perhaps, of the few years, when the government acted under his highness the lord protector; nor does our statute book afford any other authority for that division of the legislature, which was always so observed under the proprietary government.

1650.

At the meeting of the lower house, on Monday, 8th of April, a case occurred, relative to the oath just before prescribed to the burgesses. Mr. Thomas Matthews, burgess from St. Inigoe's hundred, had neglected or refused to take that oath, and on being required to take it, (perhaps, by the speaker,) he replied, "that he thought that oath could not be taken by him; for, that according to his lordship's instructions sent hither, that *all people believing in Jesus Christ should have the free exercise of their religion*; and accordingly he ought to be guided in matters of conscience by his *spiritual* council; and, if so be he understood not and could not be satisfied in his judgment in any matter which may be spoken or debated, he could not advise with whom he ought therein, if he took such oath; and so consequently had not the free exercise of his religion."

We must suppose from the tenor of this reasoning, that Mr. Matthews was a zealous Roman Catholic. Although indeed it is impossible for any sect of christians to have been more completely under the dominion of their priests and elders, than the Congregationalists or Puritans of New England were at this period of time, which must have been the case also with the colonists of Providence in Maryland; yet, as the Roman Catholic party of the province were evidently at this session of assembly in the minority, and did not heartily approve of the proposed oath of secrecy, which must have emanated from the Puritans, we must infer from Mr. Matthews's objection, that the "spiritual council," to which he alludes, was some father confessor, or other ecclesiastic character, of the Romish church, with whom he had been in the habit of consulting and advising in all difficult cases, whether spiritual or temporal, as many good Catholics, as well as other members of other sects, are in the practice of doing even at this day. The principle, however, which pervades his reasoning, as above, would be rather inadmissible under our modern governments of America. When our American congress occasionally sit with closed doors, (notwithstanding

the republican principle, that republics ought to have no secrets,) should a member rise and say, that he could not consent to keep any of the proceedings of congress secret from his pastor or preacher, whose advice he was in the habit of asking in every case, would it not excite a smile, and perhaps a retort courteous from some "ungodly Virginian." This remark is here made merely to illustrate the impropriety of Mr. Matthews's objection to the oath, however unnecessary such oath might have been; and such appears to have been the opinion of a majority of this assembly; for "the house thereupon gave censure, that the said Mr. Thomas Matthews should depart the house, and not have any vote therein; who departed and absented himself accordingly."

As a part of the proceedings of the assembly on this day, (8th of April,) we find on the journal the following minute.—"Was read the sixteen laws sent in by his lordship to be assented to and enacted without alteration." But it no where appears on the journal, that they were either adopted or rejected *in toto*; yet, as some of the subjects of these laws were acted upon at this session, and legislative acts passed relative thereto, particularly the act of recognition, and the act against raising money within the province without consent of the assembly, also those concerning levying of war and concerning trade with the Indians, we may therefore suppose, that the assembly of this session did, as they themselves said, at the last session they either had done or would do, *selected* such of these sixteen laws sent in by his lordship, and enacted them, with perhaps such alterations as were agreeable to them.

The expulsion of Mr. Matthews from the lower house, as just stated, occasioned some animadversions upon it by one of the members of the upper house, particularly by Mr. Thomas Greene, the former governor, and now first named in the council. Mr. Greene, being a Roman Catholic, as appears, naturally espoused the cause of Mr. Matthews, and was thereby induced to utter some harsh speeches against the Puritans or Protestants for their injustice on this occasion. Those who formed a majority of the lower house, whom we may suppose to have been Protestants, if not Puritans, proposed to deliver, what they called, a *petition* to the upper house, complaining of Mr. Greene's conduct; as appears from the following entry:—"The burgesses delivered a petition to the upper house for certain harsh speeches

CHAP. V. uttered by Mr. Thomas Greene against them, with injustice for
 1650. expelling Mr. Thomas Matthews out of the house, refusing to take the oath of secrecy; and for *their* taking the said oath in that manner.”

During the debate on the above proposition of a petition, it naturally occurred to the lower house, that it would be useless for them to take an oath of secrecy, unless the like injunction was observed by the upper house. They, therefore, made the following order:—

“Upon debate of which,” (that is, of the petition,) “it being conceived impertinent* for the burgesses to take the oath of secrecy in the lower house, unless the same were likewise taken by the council in the upper house,—† which said order was brought into the lower house; viz.—Whether such members in the upper house, refusing to take the oath of secrecy as the burgesses, shall have liberty or vote in the said house; and the house assented, that they should not have vote or seat in the said house during the assembly, unless they assent and take such oath.”

The obscurity of expression, in which this order is drawn, occasions some difficulty or uncertainty in the interpretation of it. The impropriety in the lower house’s attempting to expel a member of the upper house from having a seat or vote in such upper house, seems to preclude the supposition, that such was the meaning of the order. But, as the words—“said house” must refer to the house last mentioned, to wit, the upper house, and the members of the upper house sitting by themselves, having neither vote nor seat in the lower house, if the order meant to expel any member of the upper house from a seat or vote in the lower, unless he took the oath of secrecy, the order was useless and inoperative, such member not pretending to either vote or seat in the lower house. It therefore appears to have been meant as a proposition for the other house to adopt, and perhaps so presented to them, as a part of their petition.

This petition was presented to the governor by the speaker on the same day, on which it was agreed to, to wit, on “Wednesday afternoon, April 10th;”—“and the governor told the

* The word “impertinent” here means useless, unnecessary, or inapplicable to the purpose.

† There is an omission of something here in the record, which renders the sense imperfect; but it evidently means, that the house thereupon came to the following order, as stated above.

speaker, that he should have an answer of the petition the next day." But, a whole week elapsing, and no answer being returned thereto, the lower house, on the 18th of April, sent some of their members to the governor concerning it. They returned "with this answer from the governor and upper house; that the lower house had not power of *themselves* to expel any member out of their house, *the governor not being present*; but conceived that Mr. Matthews expelled himself, for that he came not to demand his voice *after the governor himself was present in the house*." From this it would appear, that the governor and upper house were of opinion, that *his presence* was necessary in the lower house to render valid such an act of the legislature as the expulsion of one of their members. But this opinion seems to have been repugnant to the supposition, that the governor and council sat in an apartment by themselves, as before stated, and was moreover equally so to the principles of the English constitution; for, the king could not constitutionally take his seat in the house of commons.

After Mr. Matthews had been expelled from the lower house, as before stated, it became necessary that a new burgess should be elected for St. Inigoe's, or the hundred would have been unrepresented in the legislature. Accordingly on "Thursday, 11th of April," (three days after the expulsion,) "summons issued for the choice of a new burgess in the stead of Mr. Matthews." Nearly a week elapsed, it seems, before this summons was returned; when on "Thursday, 18th of April, the sheriff returned the summons and Mr. Fenwick, burgess of St. Inigoe's hundred in Mr. Matthews's room.

"Mr. Fenwick making his appearance in the house, Mr. Speaker proposed the oath of secrecy to him; and Mr. Fenwick declared, that he would take that oath, *provided* that it might not prejudice in any sort his religion or conscience. And the house voted, that the said Mr. Fenwick ought not to have place, or be a member, in the house, unless he took the oath directly as it lyeth without any reservation at all either of religion or conscience; except Mr. Manners, Mr. Medley, and Mr. Lane, who declared and desired, that the said Mr. Fenwick might have time to consider of the said oath; which was admitted and granted by the whole house till to-morrow morning."

However in the afternoon sitting of the same day,—“The whole house declared, that it never was intended by the house,

CHAP. V. that in the oath of secrecy any thing is meant to infringe liberty
 1650. of conscience and religion : whereupon Mr. Fenwick was sworn
 as the other burgesses."

Why such a strenuous opposition to this oath of secrecy should have been thus made by a party of the colonists, is not very apparent at this day ; especially as in itself it seems to have been a matter of no great consequence. If, however, we suppose, that this party, who thus opposed the measure, were Roman Catholics, we ought to infer, that they had some good reasons for so doing, which are now unknown. It is certain, that the *Protestants* then ruled and governed the province ; and, although these Protestants might, for the most part, have professed themselves to be of the old church of England, which was still the established religion in Virginia, yet, as religious consciences are very apt to veer and change with the times, and *puritanism* had become, in the mother country, the order of the day, many of our provincial politicians might think, that they could not make too much haste in following the fashion of the times ; especially, as profitable offices and honourable stations might reward those, who were most expeditious in their conformity. That the Roman Catholics of Maryland had, at this period of time, very just cause to apprehend mischief to themselves, subsequent events have fully justified ; and it is therefore probable, that these apprehensions dictated to them their strenuous opposition to any obligation to keep secret the measures of a deliberative and legislative body, (principally composed of their most inveterate enemies,) who might thus secretly lay plans for their destruction.

The journal specifies no other business of any importance, not even relative to any of the numerous laws which they passed at this session, except an objection to the "act of recognition," which will presently be attended to.

After the proceedings of the 18th of April, the journal commences again with those of the 29th of April, the last day of the session, when—"Both houses declare, that no further secrecy is required, mentioned in the oath, (after the present day of sessions,) taken for that purpose ; neither do they find it any wise requisite."* This might possibly have been done, to quiet unfounded apprehensions.

"Upon motion of adjourning the house of assembly, it was

* From the expression above—"Both houses," &c., releasing from the oath of secrecy, it would seem, that the upper house also had taken that oath.

alleged, that all persons bound to attend the assembly ought to be protected from arrests. Whereupon the burgesses desire no protection at all for being burgesses; but declare the contrary, and desire to be liable to all suits, actions, and arrests." In this, it must be acknowledged, that the members of this assembly exhibited a more dignified independence than those of some former sessions herein before remarked upon.

"And the governor adjourned both houses till the tenth day of January next, unless upon urgent occasion, as the governor shall see cause, proclamation shall issue forth anticipating the said adjournment."*

The first of the acts passed at this session, deserving attention here, besides that for settling the assembly, before stated, was one entitled, "an act prohibiting all compliance with captain William Clayborne, in opposition of his lordship's right and dominion over this province." The cause of making this act is very fully stated in the preamble to it, in which, after reciting the decision of the lords of the council in England on the fourth of April, 1638, and the proclamation relative thereto by the governor of Virginia on the fourth of October, 1638, both of which have been herein before exhibited and remarked upon, it is further stated:—"And whereas further the said captain Clayborne hath of late, by his letters to the present governor of this province, presumed, in an upbraiding insolent threatening manner, to renew his former pretended claims here, in opposition of his lordship's right and dominion, and (as is credibly reported,) gives out in speeches, that he purposeth e'er long to make some attempt upon the isle of Kent against the peace and safety of the province," &c. The act then prescribes the penalty of death and confiscation of property upon any inhabitant of the province, who should presume in any sort to assist, abet, or countenance the said Clayborne or any of his adherents in any attempt whatsoever upon the isle of Kent or any other place within the province.† This corresponds with what has been before observed, that since the death of the late king, the abolition of the house of lords, and the ascendancy of the *independent* party in England, many of whom aspired after the *levelling* scheme, rumours had existed in Virginia as well as in Maryland, that lord Balti-

CHAP. V.
1650.

The acts of
this ses-
sion.

* The proceedings of this assembly, as above stated, were extracted from the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 398.

† See this act at large in note (LXXV.) at the end of this volume.

CHAP. V. more would be deprived of the government of his province.
 1650.

The sentiment expressed by the author of the pamphlet, before cited, entitled, "Babylon's Fall," &c., (written on the occasion, and by one of lord Baltimore's opponents,) strongly intimates what were the general opinions prevalent on the subject. "This royal jurisdiction," says he, "was thought far too high for him, being a subject, and too much unsuitable to the present liberty, which God had given the English subjects, from arbitrary and popish government." Of these general sentiments Clayborne had now resolved to avail himself, and expressing this resolution in threatening speeches in Virginia and in some rude letters to the governor,* he had alarmed the adherents and friends of lord Baltimore in Maryland. They, therefore, endeavoured to fortify themselves, as well as they could, by the terrors of a law on the occasion.

This precarious and doubtful state of lord Baltimore's title and possession of his province seems to have effected the progress of colonizing and settling it. Many of those plantations, which had been "taken up and seated," and holden under certificates of survey, without legal *grants* thereof having passed from his lordship's land office, had been "deserted," and no rents therefor paid to his lordship. As this was deemed by the assembly, not only a "great injury to the lord proprietary in the loss of his rent," but also "very inconvenient to the *commonwealth*,† by hindering others from taking the same up and seating near together for the common security," it was thought proper to apply a remedy to this inconvenience by enacting the law, passed at this session, entitled, "an act concerning deserted plantations;" which authorised his lordship to regrant such lands so "deserted," after the lapse of three years.‡

The Puritans having formed a settlement on the Severn, at a place which they called Providence, now Annapolis, as before mentioned, consisting of a considerable population, and having sent and been represented by their burgesses or delegates at this

* These letters to the governor of Maryland are not now extant at least upon record. Could they be produced, they would afford interesting matter to the historian.

† This word, here used by the assembly, seems to indicate the progress of those *republican* principles across the Atlantic, which had by this time been adopted in the mother country.

‡ As this act has been published at large in *Kilty's Landholder's Assistant*, p. 249, it is deemed improper to swell this volume with the insertion of unnecessary documents.

last assembly, and so far submitting to the proprietary government, an act was passed at this session, entitled, "an act for the erecting of *Providence* into a county, by the name of *Ann-Arundel* county." The tenor of this act was, that "that part of the province of Maryland, on the west side of the bay of Chesapeake, over against the *isle of Kent*, formerly called by the name of Providence, by the inhabitants there residing, &c., shall from henceforth be erected into a shire or county, by the name of *Ann Arundel* county, and by that name be ever hereafter called."* This is the first act of assembly, and indeed almost the only legislative provision, for the erecting of any county within the province. It is probable, that such regulations for the apportioning of the province into shires or counties were deemed to appertain to the palatinate *regalia* of the lord proprietary of the province, upon the same principle as the counties of England were, originally laid out and divided by the celebrated king *Alfred* under the authority of his royal prerogative.† It will be observed, however, that no limits or boundaries were assigned by this act to the county. As the population of that part of the province was detached from the inhabited parts, and like the isle of Kent, now a county, insulated from the rest of the province, such population constituted the limits of the county, until in process of time other counties, being erected adjacent thereto, formed limits to the prior county.

These detached populations had, however, some inconvenience. They became thereby not only more obnoxious to the Indians, but more liable to alarm and more easily assailed by these aborigines. Some acts of assembly made at this last session indicate considerable uneasiness subsisting at this period of time among the colonists on account of some recent murders and captures committed upon them by the natives. Accordingly an act was passed, "prohibiting any Indians to come into Kent or

* It was probably so called from the maiden name of lady Baltimore, then late deceased,—Lady Ann Arundel, the daughter of lord Arundel of Wardour, whom Cecilius lord Baltimore had married, as has been herein before stated. Ante p. 193.

† In *Spelman's* Glossary, under the head—*Comitatus, quid ejus origo*, is the following passage. "Rex (Alfredus, qui regnum iniit An. 871,) totius (inquit Ingulphus) Angliæ pagos et provincias in comitatus primus omnium commutavit, comitatus in centurias et hundredas et in decimas, i. e. tithingas, divisit."—Thus we have before seen, (ante p. 376,) that lord Baltimore directed, in virtue of his "Royal Jurisdiction," a county to be laid out, of which Robert Brooke, esqr., was constituted *commander*.

CHAP. V. Ann Arundel counties without notice thereof given." As these
 1650. acts of assembly, relative to the fears and alarms, which our early colonists experienced from their savage neighbours, become daily more interesting, especially to the inhabitants of the Atlantic states, who gradually become less familiarized to the customs and habits of these savages as they recede from their neighbourhood, it may not be improper to insert in the body of our history some of these legislative measures, adopted by our ancestors, to guard against such their daily impending dangers. The act entitled, as last mentioned, was as follows :

"Whereas two of the inhabitants of Kent and Ann Arundel counties have been lately, in a most barbarous and cruel manner, murdered by certain Indians ;* for the better preventing of the like mischiefs (under God) for the future, Be it enacted by the authority of this present general assembly, that the commanders of the said several counties shall cause speedy notice to be given to all Indians that use to resort or come unto the towns or dwelling houses of any the inhabitants there, and to all other Indians that shall happen to come into these parts or live near at hand, (as with conveniency they may,) that they and every of them refrain coming thither for the future, either to hunt or upon any other occasion [except to]† speak with the said commander upon some urgent occasion, and that before they shall approach too near the towns or habitations as aforesaid, either by land or water, they shall give or make some known sign or token of such their approach for the purpose aforesaid, and in this case all and every the inhabitants of the said several counties are hereby strictly charged and required, as they will answer the contrary at their perils, not to offer any such Indian or Indians any harm or violence, but safely to conduct them, not

* It appears from a treaty made by the Marylanders with the Susquehanocks, within about two years from this period, viz. in 1652, (which will be inserted hereafter,) that all that part of Maryland, which lies between the Patuxent and Susquehanogh rivers on the western shore, and all from the Choptank to the Susquehanogh on the eastern shore, were claimed, having been conquered probably at some period of time prior to this treaty, now unknown, by the Susquehanogh nation of Indians. It is most probable, therefore, that the Indians, who committed the above mentioned murders, were the Susquehanocks, and that the recent settlement of the English, on the Severn particularly, must have given to them additional umbrage and vexation.

† In the record of this act, instead of the two words [except to] within brackets as above, the words—"either to hunt"—are repeated. But as the sense of this clause appears very clearly to have been as above, I have taken the liberty of altering it by inserting the words—"except to."

being above four in number, to the commander or commanders CHAP. V.
1650.
aforesaid, both in the coming and going; and in case any Indian or Indians whatsoever, after such notice given as aforesaid, shall presume, contrary to the direction herein prescribed, to approach or come unto or near any the towns or dwelling houses before mentioned, it shall be lawful for any inhabitant or inhabitants of either of the said counties, with gun or other weapon to shoot, kill, beat, or take prisoner any such Indian or Indians, any act of assembly or other law or order to the contrary hereof at any time heretofore in any wise made notwithstanding; and all and every the inhabitants of the said several counties are hereby strictly charged and required not to harbour or conceal any Indian or Indians whatsoever, which shall happen contrary to the direction herein before expressed to come unto any of their houses or plantations within the said counties or either of them, upon peril of such punishment or penalty, (not extending to life or member,) as the said commander and commissioners* of either of the said counties respectively shall think fit; and all and every of the inhabitants of the said counties are to yield obedience in all things to the directions of this present act, untill the governor of this province for the time being, by proclamation for that purpose, shall give order to the contrary thereof.”†

This assembly, moreover, not content with this cautionary mode of preventing a reiteration of such murders by the Indians, thought it proper, that some more effectual remedy to such conduct of the natives should be applied; and accordingly enacted, “an order providing for a march upon the Indians,” as follows:

* Throughout the early records of our province the word “commissioners,” when used as above, means—justices of the peace; who were the judges of the county courts in the same manner as in the courts of quarter sessions in England. From this also it may be inferred, that the commander of any county in the province was generally the person first named in the commission of the peace for that county.

† Taken from the record book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 383.—It may probably be worth mentioning here, that a *memorandum* is subjoined to the first act of this session, as they stand on the record, after that “for settling this present assembly,” as follows: “The lower house assented:—William Britton. The upper house hath assented:—Thomas Hatton. Enacted by the governor,—William Stone.” To all the other acts of this session also, are subjoined,—“Assented *ut supra*.—Enacted *ut supra*.” From which it is to be inferred, that each respective act of this session passed through the forms of investigation and assent in the two respective houses—the assembly and council, and finally received the assent and signature of the governor.

CHAP. V. "Whereas certain Indians this last year have most wickedly
1650. and barbarously murdered an English inhabitant of the county of Kent,* and another inhabitant likewise since in Ann Arundel county, Be it therefore ordered, that the governor, with the advice of the council or the major part of them, shall have power, in case such Indians, who have committed such barbarous and wicked murders, shall not be sent in, after demand made of them, to the government here, to receive such punishment as is due for such offence, to press men, and to appoint such allowance for their pay, and to make war upon these nations of Indians refusing to deliver up those offenders as aforesaid, as in his and their best discretion shall be thought fit; the charge of which war to be laid by an equal assessment on the persons and estates of all the inhabitants of this province."

Two children also of a certain Thomas Allen deceased had been, at some time previous to this assembly, captured by the Indians, and some difficulty seems to have arisen with the provincial court, who first took cognizance of the business, in raising money or tobacco sufficient for the redemption of these two unfortunate orphans, which sum amounted to 1500 lb. tobacco; viz. 900 lb. for the eldest, and 600 lb. for the youngest. The administrator of Allen's estate informed the court, that the testator's estate was not sufficient to defray the charge after paying all the debts; and the provincial court having referred the matter to the assembly, the latter made an order, in which, after stating, that "the public charge this year being like to be very great and burthensome," they directed, that the said two children should serve any inhabitant of the province till they attain to their several ages of twenty-one years, as the provincial court shall think fit; such inhabitant paying the said charge of their redemption." It must be confessed, that the circumstances of this order, seem to indicate some deficiency of generous feelings in this assembly on so interesting an occasion.

It would appear, however, that notwithstanding all this warfare with the Indians, or some particular tribe or tribes of them, yet a considerable *trade* was still carried on, either with these hostile Indians, or more probably with some other tribe or tribes, who remained in a state of peace with our colonists. An act

* The isle of Kent is here meant, which had been before erected into a county. The county denominated Kent at this day does not appear to have been inhabited by any English at the time of this session of assembly.

was passed at this session, entitled, "an act concerning trade with the Indians," which contained in substance the following regulations. CHAP. V.
1650.

"1. All inhabitants of the province had free liberty to trade with any Indians, for any beaver, or other commodities, and the same to export (corn excepted,) which could not be exported without special leave from the governor,) paying a tenth in weight or value, for all beaver so traded for, for a custom to his lordship, &c.

"(2.) No such traders to sell any arms or ammunition to any Indians, or quarrel with, or give just occasion of offence to, the Indians, whereby the public peace, &c., might be endangered; nor to enhance the price of corn, to the prejudice of the people; nor to go out upon such trade too weak in strength, or arms, whereby the Indians might be emboldened to do them mischief.

"(3.) Inhabitants of this province, desirous so to trade, were to take out license from the governor, (which was never to be denied upon application,) and give security for observing the provisoes above mentioned.

"(4.) No persons, not being inhabitants, were permitted to trade with the Indians, without special license, under the great seal, on pain of confiscation of all goods and commodities so traded with, or for, &c."*

Analogous to this last clause, another "order" was passed this session, entitled, "An order prohibiting *foreigners* to hunt within this province." This deserves mention particularly on account of the word "foreigners;" which, from an expression in the order, viz. "no foreigner, either *English* or *Indian*," &c., must have meant the same as the expression in the last mentioned preceding act, to wit, "no persons, not being *inhabitants*," &c.

This last mentioned order seems to have been intended to prohibit a very mischievous practice, which has been before mentioned, and which, until this session, must have existed in a considerable degree. It was common with the inhabitants of the province to employ *Indians* to hunt and kill deer for them, furnishing them with guns for that purpose. These savages were thus enabled, not only to learn the use of fire-arms, but in some measure to furnish themselves with those arms, pretending that

* The above abstract of the act is from *Bacon's Laws of Maryland*.—This "Act concerning trade with the Indians," seems to have been one of those sent in by his lordship, from his "Declaration, *anno* 1649," before cited.

CHAP. V. they were either lost or destroyed. It gave considerable dis-
 1650. pleasure also to the inhabitants of the province, that "English
 foreigners," (by whom we must understand some of the inhabitants of Virginia to have been meant, perhaps those who resided just across the Patowmack,) had licenses granted to them to hunt deer on the Maryland side of the river. The practice, before mentioned at the last session, also, of turning hogs out into the unclosed woods or forest, had created a breed of wild hogs, being *unmarked*, became, like deer, lawful game, to be hunted like them under special licenses granted for the purpose. These inconveniences occasioned, not only the passage of the act, relative to hunting deer by the Indians and foreigners, as just stated, but also a renewal or revival at this session of the "order," entitled, "An order for recording the mark of cattle and hogs." To enforce which acts, it may be here mentioned, that governor Stone issued a proclamation on the same day on which the assembly rose, to wit, on the 29th day of April, (1650,) for revoking and making void all licenses heretofore granted for the preceding purposes.*

Most of the acts of this session of 1650, of a political complexion, appear to have been, as before stated, some of those acts sent in by his lordship for the assent of the assembly; which acts, although they were not admitted by the assembly *in toto*, as his lordship directed, yet were culled and some of them selected and passed at this session of 1650. Among them was the act entitled, "An act of recognition of the lawful and undoubted right and title of the right honourable *Cecilius* lord baron of Baltimore, *absolute lord* and proprietary of the province of Maryland, unto the said province, and unto all islands, ports, and creeks, to the same belonging." The preamble to this act, however, is couched in such flattering terms personally to his lordship, that we can hardly suppose it to have been so penned under his lordship's inspection in England, but must have been superadded by some of his faithful tenants in the colony, perhaps by the secretary of the province—Mr. Hatton;—as follows:

* Another proclamation for recalling these "licenses and warrants" was issued by the governor on the 20th of November, 1650, in which the inconveniences resulting from these licenses, &c., are more clearly stated,—that "this *county* of St. Mary's and the parts adjoining are very much pestered with great concourse of Indians from several parts, to the annoyance and terror of divers of the inhabitants here, and excessive waste and destruction of the *game* of this province, and dispersing and scattering of the cattle and hogs of the inhabitants."—Council Proceedings from 1636 to 1657, p. 253.

“Great and manifold are the benefits, wherewith Almighty God CHAP. V.
hath blessed the colony, first brought and planted within this 1650.
province of Maryland, at your lordship’s charge, and continued
by your care and industry in the happy restitution of a blessed
peace unto us, being lately wasted with a miserable dissention,
and unhappy war. But more inestimable are the blessings there-
by poured on this province, in planting *christianity* among a
people, that knew not God nor had heard of Christ.* All
which we recognize and acknowledge to be done and performed
next under God, by your lordship’s industry and pious inten-
tions towards the advancement and propagation of christian re-
ligion, and the peace and happiness of this colony and province:
So we doubt not, but our posterity will remember the same, with
all fidelity, to the honor of your lordship and your heirs forever.”
It is then enacted, “That we being bound thereunto, by the laws
both of God and man, do recognize and acknowledge your lord-
ship’s just title and right unto this province, by the grant and
donation of the late king Charles, of England, &c. And do
also recognize and acknowledge your lordship to be true and
absolute lord and proprietary of this province. And do humbly
submit unto all power, jurisdiction, and authority, given, grant-
ed, and confirmed unto your lordship and your heirs, in and by
the said grant and donation: And do hereby submit and oblige
us, our heirs and posterities forever, *until the last drop of our
blood be spent*,† to maintain, uphold and defend your lordship and
your heirs, lords, and proprietaries of this province, in all the
royal rights, jurisdictions, authorities, and preheminencies, given,
granted, and confirmed unto your lordship, by the said grant and
donation, *so far as they do not in any sort infringe or prejudice*

* With what absurd pertinacity is this false and unfounded sentiment held forth even at this day! With the exception of a few individuals brought up and educated among the whites, the Indians generally continue to reject the system of christianity with disdain, and in the few instances wherein they conform to its ceremonies they adopt only its superstitious concomitants, their moral principles remaining unimproved. Were a total prohibition enacted by law against missionaries being permitted to go among them, and instead of them artisans and agriculturists sent, with strong injunctions to refrain from the propagation of any religious opinions, the *sense* and *reason* of these savages would be addressed, and not their *imagination*s. They would then, most probably, perceive the advantages of civilization. But even civilization communicated to them would be rather a curse than a blessing, if their country is to be entirely taken from them.

† This strong expression seems to be further proof, that this act was modified by some friend of lord Baltimore after it was sent in. His lordship himself would hardly have introduced such an expression into a law of his own framing and propounding.

CHAP. V. *the just and lawful liberties or privileges of the free born subjects*
 1650. *of the kingdom of England."*

From "his lordship's Declaration, *anno* 1649," as before stated, it appears that the assembly of the last session, to wit, in 1649, had refused to pass this act on account of the two exceptionable expressions in it,—“absolute lord and proprietary,” and “royal jurisdiction.” Why the assembly of this session, of 1650, now assented to it, as it is, with those expressions in it, we have no authority or foundation even for conjecture. If these objections emanated from the Puritans within the province, as they appear to have been subsequently entertained by them,* it is more difficult to account for the passage of the act at this session than the former; for, at this session they had burgesses or delegates from their settlement at Providence, but none at that of 1649. The saving of the “liberties and privileges of *English* subjects,” at the end of the clause, might have been inserted in the original act sent in by his lordship; for, by the fifth section of the charter, lord Baltimore and his heirs were “created and constituted the true and absolute lords and proprietaries of the region aforesaid,” (to wit, Maryland,) “saving always the faith and allegiance and sovereign dominion due to us,” (the king) “our heirs and successors,”—which *saving* in the charter seems to be synonymous to that in the act.

His lordship's declaration, (*anno* 1649,) before mentioned, seems to intimate also, that another act of this session, entitled, “An act against raising of money within this province without consent of the assembly,” was one of those sent in by him. If so, there arises at once a strong presumption against the validity of an argument, which was raised by some lawyers of Maryland, at the commencement of the American revolution, that this act of assembly, inasmuch as it expressly exempted “the freemen of this province,” from any “subsidies, aids, customs, taxes, or impositions” to be laid upon them “without the consent and approbation of a general assembly of this province,” exempted them from *parliamentary* taxation. In reply to which it might be observed, that if this act emanated solely from the will of lord Baltimore, he had no power or authority to exempt the inhabitants of this province from the legislative powers of the parliament of England; nor, could the assembly itself

* See the quotation from Leonard Strong's pamphlet, entitled, “Babylon's fall,” &c., ante, p. 371.

or the inhabitants of the province themselves, deprive, by their own legislative act, the English parliament of any powers which they before had. But it is most certain, that this act, to whomsoever it might owe its origin, was not meant by any one, at the time of its enactment, to have any relation to the powers of an English parliament in imposing taxes upon the colony of Maryland. It is most probable, that his lordship, on account of some former attempts by him to legislate for the province without the intervention of the assembly, had created jealousies and given his enemies (the Clayborne faction,) ostensible grounds to raise a clamour against his proprietary rights. To conciliate the good will of his colonists, and to give them assurances, that he meant not for the future to exercise even the semblance of arbitrary power, especially in taxation, he sent them this act of assembly; to which, without doubt, they readily, when met in assembly, gave their assent. That the act could have no allusion to the power of the English parliament is evident from the preamble of it. "Forasmuch as *the strength of the lord proprietary* of this province doth consist in the love and affection of his people, on which *he doth resolve* to rely upon all occasions,* for his supplies both by sea and land, not doubting of their duty and assistance upon all just and honourable occasions, be it enacted, &c." It might be added also, that neither lord Baltimore in England, nor his colonial assembly in Maryland, in these times, especially in the year 1650, when the government of England was a democratic republic, and the parliament every thing, with Cromwell and his army to back them, would have had the assurance and effrontery to call in question the powers of the English parliament as it then existed. This opinion seems to be corroborated by subsequent events; particularly by an ordinance of the English parliament of this very year, passed October 3d, 1650, "for prohibiting trade with Barbadoes, *Virginā*, Bermuda, and Antago." This prohibition of the trade of these colonies was intended as a punishment for their rebellion against the English parliament, and the *preamble* of the ordinance is declaratory of a very different construction of their powers than our act of assembly was supposed to intimate. It states, that "whereas the islands and *other places in America*, where any English are planted, are and ought to be subject to and dependent

* This *resolution* of future conduct seems to intimate, that the whole of this act was penned either by his lordship or under his inspection in England.

CHAP. V. upon England, and hath, ever since the planting thereof, been and
 1650. ought to *subject to such laws, orders, and regulations as are and shall be made by the parliament of England.*”* This declaration does not seem to confine their powers to the “regulation” of *trade* merely, but to extend them “to laws and regulations” in all cases whatsoever; and, therefore, to include laws of taxation. This parliament were not in the habit of uttering empty words; they followed up this ordinance with the “reducement,” as it was called, not only of the West India islands and Virginia, but even of unoffending Maryland; as will presently be seen.

The next act of this assembly also, in the order of publication, entitled, “an act concerning the levying of war within this province,” was, from his lordship’s declaration, before stated, one of those acts sent in by him. The first section thereof enacted, “that if the lord proprietary, or his lieutenant, or governor, should, at any time hereafter, make any war out of the limits or precincts of this province, without the consent and approbation of the general assembly of this province first had and declared, the freemen of this province shall be no way obliged or compelled, against their consents, to aid or assist with their persons or estate in the prosecution or maintenance of such war.

“*Sect. 2.* That no martial law shall, at any time hereafter, be exercised within this province, but only in times of camp, or garrison, and that within such camp or garrison.

“*Sect. 3.* That all charges arising by defence of this province against any invasion, insurrection, or rebellion, shall be defrayed by this province, by an equal assessment upon the persons and estates of the inhabitants thereof.”†

This act was, without doubt, intended by his lordship, as one of those conciliatory measures, which he was now practising in order to regain the “affections of his people,” and was most probably the result of some just complaints, which had existed within the province, on the subject of martial law. To take planters from their civil employments on their plantations and compel them to the performance of military duties as soldiers,

* The substance of the enacting part of this ordinance is in *Hazard’s Collections*, vol. 1, p. 636, but the *preamble* thereto, containing the above declaration, is unaccountably omitted. That part of it, however, quoted above, is to be found in the same volume, p. 559, stated in the “Province of Maine’s Petition.” It is also stated by *Chalmers* in his *Annals*, p. 122, and by *Robertson* in his *Hist. of America*, vol. 4, b. ix.

† This and the preceding act, published at large in *Bacon’s Collection*, 1650, ch. 25 and 26.

and subject them to the summary adjudications of martial law, CHAP. V.
1650.
is a despotism inconsistent with rational human liberty in a state
of society.

The act, passed at this session also, entitled "an act for taking an oath of fidelity to the lord proprietary," seems to have been rendered, by subsequent events and complaints, one of as much notoriety as any of those before mentioned, which were passed at this last session. The oath prescribed by this act varies considerably from the oath of fidelity, before stated, prescribed by his lordship to be taken by every person, who would obtain the grant of any lands, and which was so obnoxious to the Puritans.* One of their objections to the former oath has been before mentioned, that is, that the words—"absolute lord" and "royal jurisdiction," were "thought far too high for a subject to exact, and too much unsuitable to the present liberty, which God had given the English subjects, from arbitrary and popish government, as the lord Baltimore's government plainly appeared to be."† These objectionable expressions were now carefully expunged from the oath now prescribed by this act of assembly; and a new clause inserted, somewhat bordering on mental reservation, so as at all convenient times to admit of equivocal meaning, to wit, "that they would defend and maintain all such his lordship's *just and lawful*‡ right, title, interest, privileges, jurisdictions, prerogatives, propriety, and dominion over and in the said province, &c., not any wise understood to infringe or prejudice liberty of conscience in point of religion."§ This infringement of liberty of conscience alluded to a second objection to the oath of fidelity prescribed by his lordship; which second objection has been thus expressed by the agent of the Puritans.||—"Secondly. The oath," (meaning the oath of fidelity first prescribed by his lordship,) "was exceedingly scrupled on another account, viz: that they must swear to uphold the government and *those officers*, who are sworn to countenance and uphold anti-Christ, in plain words expressed in the

* See a copy of the former oath prescribed by his lordship in note (LXIX.) before referred to.

† Leonard Strong's "Babylon's Fall in Maryland."

‡ These words, "just and lawful," not in the former oath, would at all times leave open a door to let in a convenient objection to any of his lordship's privileges, rights, or interests within the province.

§ See a copy of the oath prescribed by this act of assembly of 1650, in note (LXXVI.) at the end of this volume.

|| Leonard Strong, in his "Babylon's Fall," &c.

CHAP. V. *officers' oath, the Roman Catholic religion.* And for these people to own such by an oath, whom in their hearts they could by no means close with; what could it be accounted but collusion?" This plainly referred to the oaths of office before mentioned,* to be taken by the governor and each of the council, who were *Protestants*: to wit, that they were to bind themselves by oath—"not to trouble or molest, directly or indirectly, any person whatsoever in the said province professing to believe in Jesus Christ, and in particular no *Roman Catholic*, for or in respect of his religion." To this objection it was very properly replied by lord Baltimore's friend,†—"This oath was never *imposed* upon any body, nor any penalty appointed for the refusall thereof; for, it was free for any man, if hee did not like the oath, not to accept of the place of governor or one of the council there. Lord Baltimore appointed this oath to be taken by the aforesaid officers, when he made captain *Stone* governour and Mr. *Thomas Hatton* secretary, and other of his counsell there, who being of different judgment in religion from himselfe, his lordship thought it but reasonable and fit, that as he did oblige them by oath not to disturbe any there, who professed to believe in Jesus Christ, so to expresse the *Roman Catholicikes* in particular, who were of his own judgment in matter of religion." This second objection, which was solely directed against the Roman Catholics, was one, among numerous proofs of those times, that these Puritans, though perpetually vociferating their clamours for *religious liberty*, were really hostile to every liberal sentiment on the subject of religion. It strongly corroborates the remark of *Hume* upon them:—"They maintained, that they themselves were the only pure church; that their principles and practices ought to be established by law; and that *no others ought to be tolerated*."‡ With what propriety, therefore, can it be trumpeted forth, as it is at this day, in every newspaper of the United States, that these people were persecuted and driven from their native country to seek an asylum in the wilds of America?

The act of assembly, however, of this session, "for taking an oath of fidelity to lord Baltimore," was the work of the Puritans themselves. It is certain, that they had a preponder-

* In p. 335-6, and in note (LXII.) and (LXIII.)

† Mr. John Langford, in his "Refutation of Babylon's Fall," &c.

‡ *Hume's Hist.*, in his Appendix to the reign of James I.

ating influence in the house of burgesses or delegates of this session. And, although the laws of this session, (of 1650,) bespeak much moderation, and perhaps political wisdom, yet this might have been the result of what appears to have been the fact, that the religious parties in the province were at this time nearly balanced. The Puritans settled at Providence, to the amount perhaps of about a hundred, were exceeded in population by those of the county of St. Mary's, whom we may suppose to have been for the most part Roman Catholics. Policy, therefore, evidently dictated to these Puritans, thus newly settled in the province, to adopt some degree of moderation in their conduct. But, when the strong arm of the mother country was stretched out in their behalf, and Maryland with Virginia and the other colonies, was "reduced" to a submission to the Puritanic parliament of England, these Puritans then exhibited their propensities to arbitrary power; as the sequel of this history will shew.*

With this view of the state of parties at this time within Maryland, we can easily reconcile the enacting clause in this act of assembly, which prescribes the penalty on a refusal of this oath. It is in substance thus expressed:—"Every inhabitant of this province, above the age of sixteen years, who has, or shall from time to time have, any estate in lands within this province, and be at any time in person within the same, shall take the oath here under mentioned.† On refusing the same he is to be expelled and banished this province, and not to return again without leave. Persons expelled or banished for such refusal, or shall afterwards return without leave and refuse the same, shall be subject to such fine and imprisonment, as the lord proprietary, his lieutenant, or chief governor or privy council of this province, or the major part of them, shall think fit." The lord proprietary's lieutenant and privy council constituted at this time the *provincial court*, the supreme court of the province, so that the penalty was indeed nothing more than that punishment which the common law of England vests in all its courts in cases of *misdemeanor*:—fine and imprisonment at the discretion of the court. But, if we are to believe Mr. *Langford*, who wrote within a few years after this period, (viz. in 1655,) "no person within the province was ever yet banished or fined

* See note (LXXVII.) at the end of this volume.

† The oath before stated in note (LXXVI.) at the end of this volume.

CHAP. V. for refusal of it; only they would have no land granted them
 1650. from his lordship, unless they took it."

Among those laws sent in by his lordship and passed by this assembly, or recorded among its legislative acts, not hitherto herein noticed, was that entitled "an act of oblivion." By this act was granted a free pardon of all offences, capital or other, and an abolition of all actions tending to recover damages for any fault committed against any one in his lordship's peace, &c. by any of the party, who were in rebellion against his lordship's government here, at any time between the 15th of February, 1644, and the 5th of August, 1646—excepting *Richard Ingle* and *John Durford*, mariners, and such others of the *isle of Kent* as were not pardoned by his lordship's brother, Leonard Calvert, esq., deceased, &c. Also, that no contract entered into with any one in that rebellion should be enforced. "And for the preserving of peace and amity, all reviling speeches, practices, or attempts, tending to the disturbance of the amity desired and intended, and all reviling and upbraiding others with matter of plunder, rebellion, or other odious or reproachful terms for any matter or thing, pardoned by his lordship or abolished by this act, be utterly forborne and laid aside, upon pain of imprisonment during pleasure, fine, banishment, stocks, pillory, whipping, any one or more of these as the lieutenant or chancellor and council of this province for the time being, or the major part of them then being in court present, whereof the said lieutenant or chancellor, or their respective deputy, being always one of the said council, to be always one, and to have a casting voice, shall think fit." This was one of the conciliatory measures of his lordship to restore himself to the "affections of his people," and to counteract the threats of depriving him of his province.

The only remaining laws of this session, deserving notice, are two, remarkable for their attention to what may be called the domestic policy of the province. One, entitled, "an order for the relief of the poor," and another, entitled, "an act concerning the registering of births, marriages, and burials." In respect to the former, it has been observed by a learned annalist,* that this order was "the first notice that any *such* existed" within the province. Europeans still continue in the delusion, that no one can possibly starve in this land of promise. Alas! every landholder in Ma-

* Chalmer's Annals, p. 221.

ryland at this day can testify, that England is not the only coun-
try in the world, where the relief of the poor becomes the bur-
then of the rich, or the support of the idle vagabond is the op-
pression of the industrious citizen. As to the latter act; as
long as civil society consists of an aggregation of families, and
property is allowed to be descendible, such a law is essentially
necessary; and it must be always of political importance to rulers
to be apprised of the increase or decrease of the population over
whom they rule. But our statesmen of Maryland, at this day,
think these subjects below the *dignity* of a republican legisla-
ture.

CHAP. V.
1650.

After this last session of assembly, the affairs of the province
seem to have subsided into apparent peace and quiet. The
Puritans of Providence appear to have acquiesced in and sub-
mitted to the proprietary government at St. Mary's. Our docu-
ments do not furnish us with any material occurrence within the
province for several months until the governor's visitation in July
of this year to the settlement at Province for the purpose of or-
ganizing it into a county. The reader will observe, that there
were now three distinct settlements formed within the province
at some distance from each other. The inhabitants of St. Mary's
county forming the principal part of the population of the pro-
vince, retained with themselves the seat government. Those of
the *isle of Kent*, though prior in time, yet being fewer in num-
ber, had been organized, some years before this, into a separate
county, under the special superintendence of an officer, called a
commander. It is not easy at this day to define with exactness
the extent of the powers of this officer. He appears to have
been somewhat in the nature of a deputy to the governor of the
province, on account of the insular and detached situation of the
inhabitants of that part of the province, and to have been invest-
ed by the tenor of his commission with all the governor's mili-
tary as well as civil powers, as to that particular county, though
subordinate to the superior powers and appellate jurisdiction of
the governor and council at St. Mary's. This will be more par-
ticularly understood from the commission to Mr. Robert Vau-
ghan, to be *commander* of the isle of Kent, as herein before
stated.* A similar commission was now issued by the governor,
while on his visit at Providence, directed "to Mr. *Edward Lloyd*,
gent.," appointing him "to be commander of Ann Arundel

The go-
vernor
visits Pro-
vidence
and organ-
ises it into
a county
called Ann
Arundel.

* See before, pp. 304, 305.

CHAP. V. county, until the lord proprietary should signify to the contrary,"
 1650. and to Mr. James Homewood, Mr. Thomas Meares, Mr. Thomas Marsh, Mr. George Puddington,* Mr. Matthew Hawkins, Mr. James Merryman, and Mr. Henry Catlyn,† "to be commissioners‡ of the said county with yourself,§ for granting warrants and commissions, and for all other matters of judicature, with whom you are to consult in all matters of importance concerning your said county; and you are to call and appoint courts to be kept within and for the said county; in which courts you the said commander, or your deputy, (being one of the said commissioners,) with any three or more of the said commissioners there present, from time to time are to hold pleas, and finally to determine all causes and actions whatsoever civil, happening or arising between any of the inhabitants of the said county, of what value soever, saving and reserving to all and every the inhabitants of the said county and others liberty of *appeal* from the said county court to the provincial court in any civil cause or action to the value of £20 sterling or 2000 lb. tobacco, and upwards, the party so appealing first putting in sufficient security to the said county court to be answerable for treble damages in case the order or judgment of the said county court, made in that cause, shall happen to be confirmed upon hearing by the provincial court; and also to hear and determine all matters criminal happening and committed in the said county, which may be heard by justices of the peace in any county in England in their courts of session, not extending to life or member; and further to do, use, and execute all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said county, as any justice of the peace in England may or ought to do, by virtue of his commission for the peace; further likewise authorising you the said commander, or your said depu-

* Mr. Puddington had been one of the burgesses or delegates at the last session of assembly.

† The names of these gentlemen are here stated, principally with a view of gratifying the reader, who may be a native of the province, in his curiosity to know the names of those persons, who were, as may be inferred from the above commission, the principal men among the Puritans who first settled on the Severn, and from whom many respectable families in this state now deduce their descent.

‡ In all commissions in the provincial records, similar to the above, the word, commissioners—means justices of the peace.

§ That is, with Mr. *Edward Lloyd*, to whom the commission was directed, as above.

ty, to elect and appoint all necessary officers for the execution of justice and conservation of the peace there, with allowance of such fees as are usually belonging to the same or the like officers in *Virginia*; and to do all other things and acts, which shall be necessary for the execution of the powers and jurisdiction hereby committed unto you. Given at *Providence* this 30th day of July, 1650.—*William Stone*.”*

As lord Baltimore's regulations of his land affairs within the province are, on some occasions, necessarily connected with the political history of the province, it will be proper to mention here, that governor Stone, while he was now at Providence on the Severn on the 29th of July, the day preceding the date of the foregoing commission, issued two several commissions, one to each of the commanders of the isle of Kent and Ann Arundel, respectively, authorising them, each in their respective counties, “to grant warrants for land within the said county to any adventurers or planters according to his lordship's conditions of plantation, whereupon such land shall happen to be due to such adventurers or planters respectively, they the said commanders causing the said warrants together with the particular demands or assignments upon which the same shall be granted, to be entered upon record by his lordship's secretary of the said province.”† The neglect of these commanders in performing the duties assigned to them by these two last mentioned commissions, relative to the grants of land, subsequently occasioned some uneasiness to the proprietary government, as will be seen in its proper place.

Before we close our narration of the historical events of Maryland for the present year, (1650,) some mention must be made of the displeasure which the permission of the governor of Maryland to the Puritans, who had been expelled from Virginia by Sir William Berkeley, to form a settlement within the province of Maryland, had given to the young king Charles the second. As lord Baltimore had instructed those, who administered his government in Maryland, to grant a general toleration to all sects of religion whatever, as has been herein before stated, part of this royal displeasure must have been directed against lord Baltimore himself. It seems to have been expressly granted to his lordship, by his charter from Charles the first, that he (lord

The commanders of the isle of Kent and Ann Arundel to grant warrants for land therein.

King Charles the second appoints a new governor of Maryland.

* “Council Proceedings from 1636 to 1657,” p. 283.

† See a copy of one of these commissions, (viz. that to captain Vaughan,) in Kilty's Landholder's Assistant, p. 75.

CHAP. V. Baltimore) should have the exclusive power of constituting and appointing his own deputy, or lieutenant, or governor of his province, as well as all such other officers and ministers of the province, as to his lordship should seem most fitting. He had accordingly hitherto exercised that power in the appointment of his brother and other subsequent governors. But the young king, though in exile on the continent, being informed of this toleration of the Puritans in Maryland, as well as of the contrary conduct of Sir William Berkeley in Virginia, undertook to deprive lord Baltimore of this power of appointment, by granting his own royal commission to Sir *William Davenant*, "constituting him governor of the said province," (of Maryland,) "alleging therein the reasons to be, because the lord Baltimore did visibly adhere to the rebels in *England*, and admitted all kind of sectaries and schismatics, and ill-affected persons, into that plantation."* This commission to Sir William Davenant was most probably granted by his majesty at the same time and at the same place as that which he transmitted from *Breda*, in June, 1650, to Sir William Berkeley to be governor of Virginia.† But we have no information, at this day, that Sir William Davenant ever availed himself of this commission, or left Europe on that account to embark for this country. It is probable, that the unfortunate events of the royal cause in Great Britain for some succeeding years, and the high handed measures now adopted by the parliament towards their American colonies, particularly in their ordinance of *October* of this year, (1650,) for punishing their rebel colonies, and their subsequent "reducement" of both Virginia and Maryland, prevented Sir William Davenant from ever attempting to exercise any power under this commission.‡

The appointment of Mr. Gibbons, of

It may be mentioned here as some corroborating evidence of the preceding charge against lord Baltimore, at least of his policy at this time in paying court to the Puritans, that *Edward Gib-*

* This fact is so stated by Mr. John Langford, in his "Refutation of Baby-lon's Fall," &c., before referred to. The commission to Sir William Davenant does not appear to be extant on our records.

† See *Chalmers's Annals*, p. 122.—It may be some illustration to the above to mention also, that prince Charles, before his father's death, in the year 1647 or 1648, granted a commission, with his father's privity and consent, who was then a prisoner, to lord Willoughby of Parham, to be governor of Barbadoes, who had previously contracted with the earl of Carlisle, the lord proprietary of the island, for the government thereof.—See *Edwards's Hist. W. Indies*, vol. ii. pp. 19, 20.

‡ See note (LXXVIII.) at the end of this volume.

bons, esqr., a gentleman who had been of some note and consideration for several years past in Boston in New England, was now, by commission bearing date, January 20th, 1650, (1651, N. S.) appointed to be one of the council of Maryland, and a justice and commissioner for conservation of the peace, and "to be our *admiral* of our said province of Maryland, under us and our lieutenant," &c. The commission, as recorded, is directed to "Edward Gibbons, esqr., *major general of New England*;"* which seems to identify him as being the same gentleman, whose name occurs on frequent important occasions in the history of Massachusetts. He is there represented as being "a gay young gentleman," who, together with some others, "of some eminence, with thirty servants," under the command of a certain captain Wollaston, emigrated to Massachusetts, in the year 1625. They settled at or near to the place now called Braintree, and, not being Puritans, but supposed to be of the Church of England, were in the habit of occasionally amusing themselves with old English sports, such as dancing round a may-pole on a May morning.† Wollaston, and the greater part of his men, were consequently soon driven out of New England, and they came to Virginia, a place more congenial to such "ungodly habits." Mr. Gibbons, however, remained behind, conscious, perhaps, that he was formed of more pliant stuff. Happening to be present at the formation of the church at Salem, in 1629, when Higginson and Shelton were ordained ministers thereof, he is said to have been so affected with the solemnity of the proceeding, that he suddenly received the grace of God, was converted to a Puritan, and requested to be admitted as a member of the church. He afterwards joined the church in Boston, and, from the number of important trusts which he subsequently bore in Massachusetts, he must have become, externally at least, a zealous Puritan. At the first formation of the confederation of the united colonies of New England, in 1643, he was appointed one of the commissioners, on the part of Massachusetts, to sit in that congress.‡ When the commissioners of the united colonies, sitting in August, 1645, had resolved to make war upon the Narraganset Indians, they appointed major Gibbons commander in

* The commission is recorded in "Council Proceedings from 1636 to 1657," p. 237.

† Hutchinson's Hist. of Massachusetts, vol. 1, p. 15, 150.

‡ It appears, that he was also at that time one of the deputies or members of the general court or assembly of Massachusetts. Hutchin's, Hist. vol. 1, p. 120.

CHAP. V. chief "of all such forces as should be sent forth of the several colonies."* In the year 1650, (prior to his appointment in Maryland,) he had been made also one of the assistants or council to the governor of Massachusetts. What induced lord Baltimore, or those who administered the government of Maryland, if it was not the act of his lordship, to place him at once in so conspicuous a situation in this province, we have no authority to determine or *data* to infer from. He had been deeply concerned with *La Tour*, in 1643, and for some years after in his (*La Tour's*) contest with *D'Aulney*, about their respective rights to the French province or government of *Acadié*. *D'Aulney* having succeeded in expelling *La Tour* from his settlement at St. John's, and capturing his goods and merchandize there to the amount, it is said, of £10,000 sterling, Gibbons lost the whole of his debt from *La Tour*, for the hire of ships, &c., to the amount of £2500. It is not impossible, that this might have induced him to turn his attention to the repairs of his fortune in some other part of the British colonies. It would seem, that with that design he made a friend of lord Baltimore. Having become indebted to him, most probably by loan, in the sum of £100 sterling, he settled in St. Mary's, and, as may be inferred from circumstances, died there about the last of the year 1655 or the first of 1656; where he left a widow, who, in satisfaction of the said debt, assigned to his lordship a wind mill belonging to her husband, (possibly the last remains of his shattered fortunes,) which he had probably built there as an humble resource for a livelihood. Whether he renounced *puritanism* or not, we have no authority to determine. But it seems, that he did not consider a Popish lord so greatly anti-christian, as to induce him to disdain the acceptance of favours at his hands.† This notice of him has been here made, with a view to illustrate the proceedings of lord Baltimore, or his government in Maryland, in regard to the toleration, and indeed promotion, of men of religious professions widely different from the Roman Catholic.

An assembly called. Our provincial documents afford us, at this period, but few events or transactions worthy of notice. There seems to have been at this time within the province, a solemn stillness, like

* See his commission and instructions, bearing date the 19th of the 6th month, 1645, among the "records of the united colonies."—*Hazard's Collections*, vol. 2, p. 33, 34.

† See lord Baltimore's instructions of the 23d of October, 1656, hereafter inserted.

that which sometimes in nature precedes an approaching storm. CHAP. V.
1651.
A similar tempest was now impending over the heads of those, who administered the government of lord Baltimore within his province. Governor Stone, it seems, agreeably to annual usage, had called an assembly to meet at St. Mary's in March of this year; (1651, N. S.,) which accordingly met on the eleventh of March, (1650, old style, as stated in the record;) but from strong circumstances it is to be inferred, that the Puritans of Providence, (or Ann Arundel,) refused or neglected to send any delegates or members to attend that assembly. It is probably owing to this non-attendance of those members, that few laws were passed at this session. Three only, relative to officers' fees and county or provincial levies, appear to have been enacted; of these the first of them only seems to be of any importance.* No journal or account of the proceedings of this assembly appears on record.† This may possibly be imputed to the succeeding disturbances and contests in the province, during which little care seems to have been taken for the preservation of any records of the passing events of the day.

There are strong grounds for supposing, that reports were now prevalent in the province, and perhaps eagerly believed and propagated by the little band of Puritans settled on the Severn, that there would shortly be, as his lordship himself subsequently expressed it,—“a dissolution or resignation in England of his patent and right to the province.”‡ The ordinance, or act of parliament, before mentioned, of the 3d of October, 1650, for the prohibition of all trade or intercourse with *Virginia* and the West India islands, therein mentioned, for their “divers acts of rebellion,” therein stated, was most probably one principal cause in originating these reports. There was a particular clause in that ordinance, (section 5th,) which seemed ominous to Maryland as well as Virginia. It provided,—“That the council of

The ordinance of parliament of 1650.

* Mr. *Kilty*, in his *Landholder's Assistant*, p. 84, has observed, that in the first one of these laws, entitled, “an act concerning the secretary's and clerk's fees,” the first notice is to be found of a distinction between *common* and *special* warrants, as referring to the location of lands; in which it was directed, that these officers should be allowed for every *extraordinary* or *special* warrant double the fee of an *ordinary* or *common* warrant.—N. B. The act is stated erroneously in his book, as of 1750, when it was in 1650: but this must have been an error of the press, or in copying.

† See *Bacon's Collection* of the Laws of Maryland, under the date of March, 1650.

‡ This appears from lord Baltimore's message or address, of August 20th, 1651, hereafter stated.

CHAP. V. state shall have power to send ships to any of the plantations
 1651. aforesaid, and to grant commissions to such persons as they shall think fit, *to enforce all such to obedience, as stand in opposition to the parliament*, and to grant pardons, and settle governors in the said islands, plantations, and places, to preserve them in peace, until the parliament take further order.”—When the council of state came to act under this ordinance, as they did in the succeeding year, (1651,) no question appears to have been entertained, whether power was not thereby given to them “to enforce” Maryland “to obedience;” but only whether or not *Maryland* should be expressly comprehended in the instructions to the commissioners for the “reducement” of the colonies. Hence this ordinance has become the leading state paper in the history of the conduct of the parliament at this time towards the English colonies in America, and the foundation of those subsequent violent proceedings towards Maryland, as well as the other colonies therein expressly included.* To this ordinance, then, we may trace the origin of those “reports” which are said to have been now, (in the commencement of the present year, 1651,) circulating in Maryland, relative to a dissolution of the proprietary government thereof. Emboldened by these reports, those inhabitants of Maryland, who were disaffected to the pro-

*This ordinance, as a state paper, ought properly to be here inserted; but as none of the ordinances during the *usurpation* in England appear in any of the editions of the English statutes at large, and *Scobell's* Collection thereof, published in 1658, is scarce, if at all, in America, the difficulty of obtaining a correct copy compels the omission of it. The copy of this ordinance, as published in Hazard's Collections, vol. 1, p. 636, purporting to be taken from Hughes's Abridgment, edit. 1657, is very imperfect. The preamble to it is there entirely omitted; although it contains a more important principle than any statute or ordinance ever made by an English parliament in relation to their colonies in America. The *substance* of this preamble, however, as well as the body of the act, is stated by *Chalmers*, in his Annals (p. 122,) thus:—“That in Virginia, and divers other places in America, there are colonies, which were planted at the cost, and settled by the people and by the authority, of this nation, which are and ought to be subordinate to, and dependent upon, England; that they ever have been, and ought to be, subject to such laws and regulations as are, or shall be, made by the parliament; that divers acts of rebellion have been committed by many persons inhabiting Virginia, whereby they have most traitorously usurped a power of government, and set up themselves in opposition to this commonwealth.” Least, however, it might be said, that this *Chalmers* was a Scotchman, a tory, and a refugee, and his authority invalid, it may be added that the substance of the same preamble is stated, in nearly the same words, by *Robertson*, in his Hist. of Virginia, and also in a document published in Hazard's Collections, (vol. 1, p. 559,) entitled,—“Province of Maine's Petition to the council of the state in England.”

proprietary government, particularly the Puritans settled on the Severn, conceiving that such "dissolution" of that government was fast approaching, refused to send delegates to meet in the general assembly to be held in March at St. Mary's, as before mentioned. It will be recollected, that governor Stone had, by his commission of the 30th of July of the preceding year, (1650,) appointed Mr. Edward Lloyd to be "commander of Ann Arundel county." Such commander was, agreeably to the usage of the province at that time, as had been before in respect to the isle of Kent, the returning officer of those burgesses who might be elected as delegates to meet in the provincial assembly. But Mr. Lloyd, as it appears, acting most probably in conformity to the wishes of those over whom he presided as commander, returned some message "to the general assembly then sitting at St. Mary's, which gave considerable displeasure to the government at St. Mary's, or at least to lord Baltimore in England, when he came to be informed of it; who expressed his resentment at the message somewhat warmly, in his subsequent letter to the assembly. What this message was, is not now to be exactly ascertained, no copy of it remaining on record. We are authorised, however, in collecting from what his lordship wrote upon the subject, that the purport of Mr. Lloyd's message was, that the inhabitants of Ann Arundel county, which they themselves called Providence, had come to a resolution of not sending any burgesses or delegates to the general assembly at St. Mary's, notwithstanding the summons for that purpose. This stand was, without doubt, taken with a view to the expected dissolution of the proprietary government, as before mentioned, and was probably meant by them as a prompt manifestation of their willingness and desire, that Maryland, as well as Barbadoes and Virginia, should be "reduced" to the obedience of the commonwealth of England.

An account of this conduct of the Puritans on the Severn was in due time transmitted to lord Baltimore in England; who, in return, sent back his letter, or message, addressed to "William Stone, esqr., his lieutenant of his said province of Maryland, and to his right trusty and well beloved the upper and lower houses of his general assembly there, and to all other his officers and inhabitants of his said province," bearing date "the twentieth day of August, one thousand six hundred fifty and one." In this letter, his lordship, after expressing his "wonder at a message which he understood was lately sent by one Mr. Lloyd,

CHAP. V.
1651.

The colony at Providence refuses to send delegates to the assembly.

His lordship's message on this subject.

CHAP. V. from some lately seated at Ann Arundel within his said province
 1651. of Maryland, to his general assembly, held at St. Mary's in March last ; and his unwillingness to impute either to the sender or deliverer thereof so malign a sense of ingratitude and other ill-affections as it may seem to bear ; conceiving rather, that it proceeded from some apprehensions in them at that time, grounded upon some *reports* in those parts of a dissolution or resignation here (in England) of his patent and right to that province ;" and, after affirming that "those rumours and reports were false," and referring them to Mr. *Harrison*, then in England, their former pastor,* for proof of their falsehood, and observing, that "in consideration of a better compliance from those people with his government there for the future, he should not any further expostulate or make any further reflection on that message, till further occasion given him by them, and if such admonition did not prevail, then that he would make use of his authority, with the assistance of well-affected persons, to compel such factious and turbulent spirits to a better compliance with the lawful government there ;" he, accordingly, "wills and requires his lieutenant to proceed with all such as shall be for the future refractory in that kind ; and in case any of the English inhabitants of that province should at any time hereafter refuse or neglect to send burgesses to our general assembly there, being lawfully summoned for that purpose, he wills and requires all the other members of the said assembly, which shall lawfully meet upon such summons, to proceed, as they ought and may lawfully do, in all business belonging to a general assembly there, notwithstanding any such refusal or neglect as aforesaid, and to fine all such refusers or neglectors according to their demerits ;† and

* See ante, p. 370.—Mr. Harrison went from Virginia to Boston in New England. After residing a year or two there, he went to England. Having taken the degree of doctor of divinity in England, he settled at last in Ireland ; but, was most probably at the time of his lordship's letter, then in England. See Hutchinson's Hist. of Massach. vol. i. p. 147. —Holmes's Annals, vol. i. p. 347.

† It seems to be unquestionable, that even at the time of, as well as since, his lordship's letter, as above, by force of the statute of 5 Rich. II. (stat. 2,) ch. 4, members of the house of commons, after *election* and *return* thereof, were finable by the house for their absence ; and this, from the expression in the statute,—“according as of old times hath been used to be done within the said realm in the said case,”—was a principle or rule of the *common law*. But, where no election had been held, and consequently no member elected, as appears to have been the case of the inhabitants of Ann Arundel, the “refusers or neglectors,” alluded to above, must have been either the *commander* of the county or the *sheriff* of such county, to whomsoever of them the *writ of election* had been sent, in not holding an election. If the statute of 23 Hen. 6, ch. 15, was in force here, (as

moreover, in case of their persisting in such refusal or neglect, after admonition thereof by the lieutenant, then that they be declared enemies to the public peace of the province, and rebels to the lawful government thereof, and be proceeded against accordingly.”

Some other occurrences of this year within the province are also to be gleaned from his lordship's message just mentioned. The *reports* complained of and alluded to therein by his lordship, had, it seems, prevailed in Virginia as well as in Maryland. It must be imputed to the prevalence of these reports, that Sir William Berkeley so far entrenched upon the rights of lord Baltimore as to grant a commission, (probably about the commencement of the present year, 1651,) to one Edmond Scarborough, of Accomack in Virginia, to fix a settlement of inhabitants from that colony on Palmer's island, a small island situated at the mouth of the Susquehanah river, unquestionably within his lordship's province. The purport of which settlement appears to have been, to establish a trade with the Indians in those parts; which trade must have been principally with the Susquehanocks, who then occupied the country contiguous to the mouth of that river,* and consequently a trade carried on *in and through* lord Baltimore's province, without any lawful authority derived from him; as he himself states, “a strange usurpation upon his rights!” It does appear extraordinary at this day, how so loyal a governor as Sir William Berkeley was, still holding out against the usurped powers of the mother country, could thus commit so hostile an act towards lord Baltimore. He must have considered his lordship, as having already lost all right to and jurisdiction over

Sir Wil-
liam
Berkeley's
attempt to
fix a settle-
ment on
Palmer's
island.

it probably was,) such commander or sheriff, as the case might be, would seem to have incurred the penalty prescribed in the second section of that statute, on such their refusal or neglect to hold an election and to make a return thereof.

* Although the Susquehanocks appear to have been the most warlike and formidable tribe of Indians within the bounds of Maryland, at the time of its first settlement, yet they must now have considerably decreased in numbers, for, in an anonymous pamphlet written in the year 1648, (an extract from which is published in *Smith's Hist. of New Jersey*, p. 31, and in *Proud's Hist. of Pennsylvania*, vol. i. p. 3,) it is stated, that “of the Susquehanocks there were not then left more than one hundred and ten;” which number, if it included women and children, could not comprehend more than fifty warriors. But the advantageous situation of Palmer's island for a trade with the Indians at that time, by means of the navigation of the Susquehanah, easy to the natives with their light canoes, must have enabled such traders to extend their traffic, not only with all the various tribes then inhabiting Pennsylvania and the upper parts of what is now the state of Delaware, but also as far north as with the Iroquois or Five Nations bordering on lake Ontario and the Niagara.

CHAP. V. his province, and that it was fair to permit his Virginians to participate in this lucrative trade with the Indians. It is probable also, that the old claim of Clayborne to Palmer's island and the right of the Virginians to a free trade "for beavers and other commodities" with the numerous nations of Indians, which the situation of that island admitted and favoured, as may be remembered to have been herein before stated in Clayborne's petition to the late king, in 1638,* now suggested to Sir William, that, if lord Baltimore's rights should be done away, the Virginians might lawfully avail themselves of this advantageous site for Indian traffic. He might possibly also have considered lord Baltimore, in his patronage of the Puritans and reception of them into his province, after they had been driven from Virginia, as decidedly taking part against the loyalists of Virginia, and therefore as not meriting any favour from them, although the Puritans should cast him away from them, as they subsequently did. His lordship, however, after expressing in his letter, his surprise at Sir William's conduct in this respect, authorises and requires his lieutenant, governor Stone, and calls upon his council, the assembly, his officers, and all the inhabitants of the province, to aid and assist therein, that, in case the said Scarborough or any other should presume, upon pretence of any such commission, to settle or trade within his province, without a lawful authority derived from him, to use his best endeavours to hinder them from so doing; to seize upon their persons, boats, and goods, and to proceed against them according to the laws of the province, or in default thereof according to his best discretion, in vindication of his wrongs and in preservation of his rights.

Lord Baltimore's directions for remedying the loss of the records.

It has been before stated, that most of the record books of the province, including such as contained the enrollment of patents of lands, had been, about the year 1644, during the time of Ingle and Clayborne's rebellion, either lost or embezzled, and some inconvenience and injury, both to the proprietary and the patentees, it was apprehended, might thereby arise from such loss; to the lord proprietary in the ascertainment of his rents, and to the patentees in the investigation and proof of their titles to their land, and consequent encouragement of law suits. To prevent these inconveniences and injuries, his lordship also, in the letter just referred to, gave directions to his lieutenant—the governor, to issue out a proclamation, requiring all persons, within a certain time therein to be prescribed, to produce to the

* See *ante*, p. 69,

surveyor general of the province, all such patents from his lordship, by which they respectively claim any land within the province, and that thereupon a true list thereof be delivered unto the governor; and he further instructed the governor to require the secretary of the province to furnish him (the governor) with a list of all such patents of land heretofore granted as were then remaining upon record; whereby, upon comparing the said lists together, the governor might see, what patents were not remaining upon record; and then to require all such persons as claim any land within the province by virtue of any such patents, not now remaining upon record within the province, to cause them to be enrolled in the secretary's office there,* within some convenient time to be limited in the said proclamation for that purpose. Whether such proclamation ever issued, we are not enabled to determine, as no such now appears on record. It must be allowed, that this proposition of his lordship appears to us at this day to have been a very prudent, just, and proper measure, and ought not to have been prevented or opposed even by those who wished to deprive the lord proprietary of all his rights within the province. It is true, that, although a small portion of the lands within the province had at this period of time been taken up, (settlements being as yet formed only within St. Mary's county, the isle of Kent,† and recently at Providence, otherwise called Ann Arundel, on the Severn,) and a lapse of more than a century and a half to the present day must have in some measure remedied all defects of titles to lands taken up prior to 1651; yet to those, who still own lands within the limits of those early settlements within the province, it would still be a desirable circumstance to be enabled to trace their titles to their lands with more clearness and less doubt. This measure of his lordship, therefore, in every point of view, was to be applauded.‡

* The secretary of the province was, at this time, *clerk of the land office* in the province.

† Some information, relative to the population of the isle of Kent at this period of time, (1651,) is to be derived from the anonymous pamphlet before cited, published in 1648, (an extract from which is published in Proud's Hist. of Pennsylvania, vol. 1, p. 116,) wherein the writer makes the following statement: "I hold *Kent isle*, having lately but *twenty men* in it, and the mill and fort pulled down, and in war with all the *Indians* near it, is not worth the keeping." The word "lately," we must suppose, referred to about the year 1647; between which time and 1651, the population could not have much increased;—say, to thirty men; which would not allow a computation of above twenty families on the island in 1651.

‡ Mr. Kilty, who was clerk of the land office in 1808, when he published his book, "The Landholder's Assistant," states therein, (p. 109,) that, "although

CHAP. V. Another circumstance, favourable to the character of lord *Cecilius*, is to be derived from this message of his just cited. It has been the ambition of philanthropists, even those of the present United States of America, to make every attempt, which could plausibly promise success, towards civilizing the Indian natives of our country. The propagation of the christian religion among them has been repeatedly attempted as the primary step towards the accomplishment of so desirable a purpose. But reiterated experiments have demonstrated, that this mode of civilization is only an idle waste of time and money. They reject the system with disdain, as being not only incomprehensible but irrational to their uneducated minds. Indeed, the reason of the thing itself, we might suppose, would at once convince every civilized white man, that a system of religion, like that of christianity, founded entirely on abstract ideas of the purest metaphysical nature, and built up by the most refined and subtle distinctions, could by any possible process of reasoning be made intelligible to any human being, who was accustomed to derive all his ideas from the senses merely. And further, were the savage capable of exercising the mode of acquiring ideas,—denominated reflection, yet it would be a vain expectation to be cherished, that he would thereby be enabled to understand the refined distinction between matter and spirit. His ideas of a God must be, therefore, purely material and idolatrous. Besides, there are certain tenets in the christian religion, which these untutored children of the forest, in the speeches of some of the most intelligent of them, have frequently attacked with some degree of perplexity to the missionaries and propagandists. The doctrine of eternal punishment for a temporary crime;—of the necessity of a mediator to obtain forgiveness from an omniscient Supreme Being of infinite justice and goodness;—that such mediator must be the *son* of God, which presents to them a

1651.
And for
civilizing
the In-
dians.

the books transferred in 1680 to the land office, then newly erected, are not all found or accounted for, yet he had seen no chasms in the present records," (of 1808,) "sufficient to *convince* him, that losses of *records* essentially injurious to titles of property in Maryland have occurred."—If the measure, above prescribed by his lordship, was really carried into execution, it may have been one cause, why no such loss, as Mr. Kilty observes, now appears, particularly as to grants or patents of lands. The "*abstract* of a book of record now wanting in the land office," mentioned in the deposition of Mr. Beddoe, clerk of the land office in the year 1736, (as stated in the report of the case of the Proprietary *vs.* Jennings, 1 Harris and M'Henry's Reports, p. 135,) may possibly have been in part the result of the above proceeding prescribed by his lordship.

gross carnal idea;—and that, let them lead ever such *moral* lives, CHAP. V.
 unless they previously receive a certain indescribable sensation, 1651.
 called the *grace* of God, they can never be saved or enter into the joys of heaven. These opinions appear to their uninstructed minds fraught with absurdity. The lord proprietary of Maryland has the credit, on the present occasion, of deviating in some degree from this hacknied mode of commencing civilization with them. The white population of that part of Maryland comprehended in St. Mary's and in part of Charles counties had now increased to that degree as to expel most of the aborigines thereof from their former scites of habitation. These rightful owners of the soil were driven out, and had to fix their homes in the more interior parts of the province. They consisted of the following tribes:—the Mattapanians, the Wicomocons, the Patuxents, the Lamascons, the Highahwixons, and the Chapticons: most of whose names point out their former residence, to those who are acquainted with the rivers and places of note, some of which are still known under those denominations, within those two counties.* Lord Baltimore being informed of their distress, and of their willingness to form a settlement by themselves under his protection and government, and “esteeming himself bound,” as he expresses it, “in honour and conscience to allow them, “according to their desire, some place of habitation there, by a title derived from him,” sent directions, in his letter or message before cited, to his lieutenant governor to cause a grant to be made under his great seal to the said Indians “of a certain tract of land in the head of *Wicomoco* river called *Chaptico*,” containing about eight or ten thousand acres.† He further directed, that the land, so granted, should be erected into a *manor*, to be called by the name of *Calverton manor*; and that a thousand acres thereof should be set apart as the *demesnes* thereof, to be *reserved* for his lordship's own use, as were usual in his grants of other manors. He also thereby appointed his surveyor general—Mr. Robert Clark, to be his steward of the said manor; and in his name to keep court baron and court leet, as occasion should require, in and for the said manor; and on his

*The Wicomoco river dividing St. Mary's and Charles counties, and the Pickawaxen and Chaptico creeks, seem to point out the scites of the residence of some of the above mentioned tribes.

† As the tract of country about the upper parts of Wicomoco river in Charles county appears to abound in swamps and marshes, it is probable, that the Indians themselves selected this situation for their grant, as affording them a greater quantity of game for their support.

CHAP. V. behalf to grant, by copy or copies of court roll, copyhold estates, 1651. for one, two, or three lives, of any part of the said manor, except the *demesnes* thereof, to any Indian or Indians, that should desire the same, and as he the said steward, with the approbation of the governor, should think fit; provided, that no one copyhold exceed fifty acres, unless it be to the Werowance or chief head of every of the said six nations respectively; and not to any of them above two hundred acres a piece; and that upon every copy so to be granted there be reserved a rent of one shilling sterling, or the value thereof, to be paid yearly to lord Baltimore and his heirs for every fifty acres of land respectively to be granted as aforesaid, and so proportionally for a lesser or a greater quantity of land.

Whatever objections may present themselves in the mind of the reader to any of the subordinate parts of this scheme, particularly as imposing on these wild children of liberty amid their native forests the apparently slavish tenures of the feudal system, yet common candour will induce every philosophic philanthropist to acknowledge, that it is by some such *political* institution, extrinsic of religious creeds and catechisms, that these human beings, now in a state of society next to that of nature, can be reclaimed from the barbarism and ignorance incident to their savage and hunter state. The appointment of lands among them, herein directed by his lordship, was meant, without doubt, to entice them to agricultural employments; which, in all ages and countries, have been obviously the groundwork of civilization. Whether the scheme succeeded or not, (for, these *Indian* copyholders of Calverton manor do not now exist,) detracts nothing from his lordship's benevolent intentions. It must now appear to the eye of every candid reader at this day as a plan of improvement both plausible and practicable; which must have been defeated merely through the influence of those moral and natural causes, principally arising perhaps from their difference of colour, and consequent repugnance to an amalgamation with the whites, which induce savages to shun the practices of civilization and gradually to retire, in a decreasing state, to their beloved haunts and occupations amid the wilderness of the country.

New directions for settling the province. The alteration made by his lordship, in his last conditions of plantation, bearing date, July 2d, 1649, where he enlarged the quantity of lands to be granted to such colonists as should transport themselves and others into the province, making such quan-

tity double to what it was by the preceding conditions of 1648, CHAP. V.
1651.
to wit, one hundred acres instead of fifty,* being found inconvenient and probably productive of some injury to the strength of the province, by placing settlements too remote from each other, his lordship thought it proper, by the advice of his lieutenant, to revoke those last instructions and conditions of 1649, in that respect, and, in his message of 1651, to direct that the quantity of land to be granted should be as it was before, only fifty acres for any person of British or *other* descent,† who should be transported into the province from and after the twentieth day of June one thousand six hundred fifty and two. He also, in this message of 1651, confirms his last conditions of plantation, of 1649, in all other respects, “with such alteration of the *oath of fidelity*, therein expressed, as we have formerly agreed unto by our *declaration* dated the sixth of August in the year one thousand six hundred and fifty, and transmitted thither the last year.”‡

His lordship, however, through an anxiety to form settlements on the remote and most disputable parts of his province, by a clause, in his said message or letter, next succeeding that just stated, directs, that the same quantity of land, as that before prescribed by the conditions of 1649, to wit, one hundred acres for each person transported, should be granted to those, who would form settlements on those remote and disputable parts. For this measure he expresses his motive to be,—“for the better publication and remembrance of the *bounds* between Virginia and Maryland, and prevention of any controversies, which may otherwise happen between the inhabitants of Virginia and those of our said province about the said bounds.” He accordingly directs his lieutenant to encourage some *English*, as soon as pos-

* See before, p. 375.

† It is worthy of remark, that the conditions of 1649 seem to confine the grants to be only “to persons of British or *Irish* descent,” although the *commission* annexed to those conditions and bearing the same date, expressly directs the governor to grant lands to any person of *French, Dutch, or Italian* descent in the same manner as to persons of *British or Irish* descent. Hence probably the expression, as above, “*other* descent.”

‡ It may be inferred from circumstances, that this *declaration*, of August 6th, 1650, contained his lordship’s *assent* only, to the oath of fidelity prescribed by the act of 1650, ch. 29, before cited, and which is the same oath of fidelity above alluded to. I did not find this *declaration* any where on record, and probably it is not now extant in the province. It may be here observed also, that Mr. *Kilty* has overlooked this *alteration* of the instructions and conditions of 1649, contained in this message of his lordship of 1651, and has omitted to state it in that part of his work, (*Landholder’s Assistant*), where he treats of conditions of plantation, &c.

CHAP. V. sible, to take up such land, as shall be due unto them in the
 1651. province, by virtue of the conditions of plantation or other warrant from his lordship, "near to the *bounds* of his said province, according to the maps thereof, which he sent thither about two years since." This is explained, in the next sentence, to be, "on or near the bounds of the said province on that tract of land, which is commonly called the *eastern shore*, lying between the bay of Chesapeake and the sea; and also on or near the bounds of our said province on that tract of land which lyeth between the creek or river, that runneth by *Patowmack-town*,* called in the map, Patowmack river, on the south, and the river; which runneth by Piscattoway, called in the maps aforesaid by the name of Piscattoway river, on the north, in which last tract is included, as we are informed, that place where Mr. Giles Brent now resides, called by him, Peace, and also the country called there the *Doages*." Subsequent disputes, relative to the division line between Virginia and the eastern shore of Maryland, evidently explain his lordship's meaning here to have related to settlements to be formed in that part of Maryland, of which Somerset and Worcester counties are now composed, bordering on Accomack in Virginia. The country of the *Doages*, (most probably a tribe of Indians so called,) must have been in that part of Charles county in Maryland, formed by the great bend of the Patowmack round what is now called Maryland Point, and extending north, as above mentioned, to the Piscattoway. It may be remarked here, that by the charter of Maryland, lord Baltimore's part of the peninsula, termed the eastern shore of the Chesapeake, was to be divided from the residue thereof, by a right line drawn from Watkins's Point; and, as the true location of Watkins's Point was uncertain, the right line dependent thereon, which formed the bounds of Maryland on that side, became also uncertain, was the subject of subsequent litigation, and finally settled by commissioners appointed for that purpose; but why any doubts should ever have been entertained, as to the *bounds* of Maryland, so low down the Patowmack

*This was an *Indian* town, seated on the Virginia side of the Patowmack, at or near to a place now called New Marlborough, in Stafford county. It seems to be the same Indian-town as that visited by governor Leonard Calvert, when he arrived with the first Maryland colony in 1634, and explored the Patowmack river as high up as Piscattoway, (see before, p. 28,) and the same as that of the *Patowomeks*, so often visited by the Virginians prior to the first settlement of Maryland.

as Charles county, since the river itself formed a natural bound-
 ary not liable to mistake, is not easily to be accounted for at this
 day, unless it be that the source or "first fountain" of the river,
 called for in the charter, was (in 1651,) totally unknown; and
 that none of the colonists of either Maryland or Virginia had as
 yet explored the Patowmack higher up than the Piscataway.

CHAP. V.

1651.

From this letter or message of his lordship to those who ad-
 ministered his government in Maryland, we derive information
 also of a small imposture, (not indeed of much importance,
 except to illustrate the practices of the times,) to which his lord-
 ship had subjected himself by his excessive anxiety to increase
 the population of his province. About the time, or within a
 few months after, he had granted the before mentioned commis-
 sion to Mr. *Robert Brooke*,* he entered into a negotiation also
 with a Mr. William Mitchell; who covenanted with his lordship
 and undertook, to transport himself and family to Maryland in
 the course of the next succeeding summer, (to wit, of 1650,) and
 to convey thither at his own charge so many persons as to
 make his family to consist of twenty persons at the least, "divers
 of them being artificers, workmen, and other very useful per-
 sons;" and in the course of the following summer (of 1651,) to
 transport at least ten persons more; for the making, erecting,
 and settling a considerable plantation within the province. In
 pursuance of this agreement, his lordship gave him a special
 warrant, dated 18th of January, 1649, (O. S.) and directed a
 grant to be made to him of a manor, consisting of three thousand
 acres, on condition that if the said Mitchell did not comply with
 his contract, one hundred acres for every person wanting, in the
 number contracted for, should be deducted out of the number of
 acres to be granted to him.† Soon after, and perhaps before
 Mitchell's departure for Maryland, his lordship, by his commis-
 sion bearing date the 4th of March, 1649, (O. S.) created him
 one of his "council of state within the province."‡ To this he
 was induced, as his lordship now expresses it in his letter or
 message of 1651, "conceiving, that by his *ability of understand-
 ing*, he would have been a good assistance to the lieutenant and
 the rest of his lordship's council, for the better conduct of the
 government there, and hoping, that, according to his serious

Mr. Mit-
 chell re-
 moved
 from the
 council.

* See before p. 376.

† See this special warrant in one of the land-office books, *Liber*, No. 3, fol. 408, and the substance thereof in *Kilty's Landholder's Assistant*, p. 79.

‡ "Council Proceedings from 1636 to 1657," p. 230.

CHAP. V. professions to him, he would, not only by his advice, but by his
1651. example of life, have conduced much to the advancement of the province, as well to his lordship's honour as to his own reputation." Mitchell transported himself, and possibly the number of persons for which he contracted; but after his arrival in the province, according to what his lordship says, "contrarily it seems, he not only fomented divisions, but also lived a most scandalous life, whilst he was in the province, with certain *women* whom he carried from England with him, leaving his wife there in a miserable condition, and did likewise, whilst he was in Maryland, most prophanely in publick discourse, profess himself of no religion; all of which was unknown to his lordship," (as he now states, in this his letter or message of August, 1651,) "until of late since the return of Mitchell from Maryland." His lordship, therefore, in this letter formally discharges him from being any longer "of his council of state" in the province, or of being a justice of peace therein, and directs his lieutenant, not to permit him hereafter, if he should return again into the province, to act again in either of those capacities.

The foregoing incident is here mentioned, with a view, not only of illustrating the mode of colonizing the province now adopted and used by the lord proprietary, but also of shewing the progress and effects of Puritanism, which had now taken firm root within the province. His lordship's uncommon anxiety for the morals of the settlers and tenants in his province, must have arisen principally from some apprehensions he was under, of giving to the Puritans, as well in England as in his province, cause or foundation for raising a clamour against his proprietary rights. Cautious to avoid in future any cause for imputations of this nature, he further directs his lieutenant, that "in case any person, who should be of his council of state, or commander of a county, or justice of peace, of his province, should there live scandalously and viciously with any lewd woman, or profess himself of no religion, and shall be legally convicted of either of the said crimes, or shall be twice legally convicted of being an usual drunkard, swearer, or curser, to suspend any such person from being of his council of state, &c., and to appoint some other person in their room, till the causes thereof be certified to his lordship, and his further pleasure be known therein."

Although Mitchell's infidelity to and desertion of his wife

deserved the severest reprehension of every good man, and lord Baltimore acted with propriety in depriving him of all office in his province, yet there is danger in legislating too much or too minutely on these subjects. A too close inspection into the private lives of subjects or citizens of a state, necessary to carry laws against such immoralities into full effect, opens too wide a door to let in the tyranny and oppression of magistrates and administrators of justice. It would be impossible to depict a despot of a religious, civil or political nature, in more glaring colours than in the character of a ruling elder of New England, at this period of time. He acted as a spy in every man's family. Adultery with a married woman had before this, in Massachusetts, been made punishable with *death*, both to the man and the woman committing it.* But, what probably weighed more with lord Baltimore than any other circumstance, in prescribing the before mentioned rigid observance of the moral conduct of his councillors and others in authority in his province, was an ordinance or law, which had been then lately passed by the parliament of England, in May, 1650, entitled, "An act for suppressing incest, adultery, and fornication;" which made these offences punishable with death;† and in July also, in the same year, they had passed another ordinance, entitled, "An act for preventing and suppressing cursing and swearing," imposing a considerable fine for the first offence, and doubling the same upon every repetition of it. At the same session, and about the same time, a bill had been introduced into the house "against painting,

CHAP. V.
1651.

* See an interesting account of the narrow escape of young man and his wife from death by this law, in the year 1663, long after they had been married, for adultery committed by them in her former husband's life.—Hutchinson's Hist. vol. I, p. 389.

† On the passage of this ordinance in parliament, Henry Martin, a member of the house, declared his opinion,—“that the severity of the punishment, being *death*, would cause those sins to be more cautiously committed, and so being undiscovered, would be more frequent.”—Rapin's Hist. (Tindal's edit.) vol. xi. p. 47. It might, perhaps, have been more justly remarked, that the excessive severity of punishments, disproportionate to the crimes, prevents the execution of the laws. It is fair to add, however, that when Cromwell marched the members of this parliament out of the house at the point of the bayonet, in the year 1653, after calling one a drunkard and a glutton, and another an adulterer, he took this Mr. Henry Martin by the cloak, saying to him—“and thou, master Martin, thou art a whore-master.” From whence it may be inferred, if we can believe Cromwell's accusations, that this law had but a feeble effect in checking these vices; most probably on account of its severity; though without doubt, it was highly productive of religious hypocrisy and pretensions, the better to cover their escape from its enormous penalty.

CHAP. V. patches, and other immodest dress of women," but it did not
 1651. pass.* Such being the temper of the times and the principles of those, who now ruled the English realm, there is no wonder, that lord Baltimore should deem it prudent to act in conformity thereto, and not give even his little Puritan colony on the Severn any cause of clamour against him.

We may further collect also from his lordship's letter or message, that not only the members of the last assembly, but those of the council also, had been remiss and negligent in their attendance to their respective duties, when summoned. Their apprehensions of the dissolution of the proprietary government might possibly have produced this effect. His lordship required, therefore, that such absentees should be proceeded against according to the laws, by fine or otherwise, at the discretion of the majority of the council or assembly; and furthermore, that the lieutenant should give his lordship information of such as thus neglect their duties, that he might displace them and put others in their room.

A law
 against
 spreading
 false news
 proposed
 by his lord-
 ship.

The before mentioned reports also, so destructive of all subordination in the province as well as of his lordship's authority therein, induced him now also, to request his lieutenant and council of the province to use their best endeavours upon all occasions for the timely suppression of all such false rumours and reports, and to find out the authors and publishers thereof, and to cause them to be punished according to their demerits; and he also recommended it to the consideration of the general assembly there, whether it be not convenient to make a law in the province, as there is in England, for the punishment of all such as should publish *false news* to the disturbance of the minds of the people, and the public peace.†

* Hume's Hist. ch. lx.

† It is laid down by writers of authenticity, that "spreading *false news*, to make discord between the king and nobility, or concerning any great man of the realm, is punishable by *common law*, with fine and imprisonment: which is confirmed by statutes, *Westm.* i. 3 Edw. i. c. 34;—2 Ric. ii. st. i. c. 5, and 12 Ric. ii. c. 11." See 4 *Bl. Com.* 149. If lord Baltimore, as lord proprietary of Maryland, was entitled to *jura regalia*, the *common law*, in this respect, would seem to have been applicable to, and therefore in force within, the province. But, from his lordship's expression above—"a law," he seems to have alluded to some one of the statutes just cited, most probably to that of *Westm.* c. 34; wherein is an expression, which, upon the principle of lord Baltimore's palatinate *regalia*, is peculiarly applicable:—"Tales, whereby discord, or occasion of discord, have many times arisen between the king and his people." So reports, whereby discord has arisen between the lord proprietary and his people of the province, would fall

These rumors and reports, however, had too strong a foundation in truth to be done away by such suggestions of his lordship. It will, therefore, be necessary here to revert to some of those important events, which had lately taken place in the mother country, and which soon had their bearing and effect upon the affairs of the province.

CHAP. V.
1651.

It has been herein before stated, that the *Dutch* nation had, from the earliest settlement of this province, as well as in Virginia prior to it, carried on a considerable commerce with the English colonies in America. We have seen herein before also, that Charles the first had, by his instructions to Sir William Berkeley for that purpose, endeavoured to preserve to the mother country that monopoly of the colonial trade, to which it was justly entitled, in remuneration of the expenditures incurred by the protection of those colonies, as well as from the natural principle of colonization.* But, that the colonies of Virginia and Maryland, finding a more ready or convenient market for their tobacco with the *Dutch* than with the merchants of their mother country, especially since the commencement of the unfortunate civil wars, had still persisted in that illicit trade.† This unlawful commerce had also encouraged and enabled these colonies, particularly Barbadoes and Virginia, to venture on a refusal to acknowledge the late changes in the government of England, and to persist in an adhesion to the cause of their sovereign, both the late and present Charles. To punish the “acts of rebellion” of these “robbers and traitors,” as they call them, the parliament made the before mentioned ordinance of October 3d, 1650. But it seems remarkable, that, notwithstanding their resentment and hostility, discernible in this ordinance, against these rebellious colonies, particularly Barbadoes and Virginia, no effectual means were taken, for more than six months, to carry its prohibitions into effect.‡ This is to be accounted for solely upon the suppo-

Proceedings in England for the reduction of the colonies.

within the rule. It may be inferred, however, that lord Baltimore did not suppose this statute to extend to Maryland. As we have now gone through this letter or message of his lordship, herein before frequently referred to, and gleaned from it such historical facts as deserve attention, the reader will find this important document at large in note (LXXIX.) at the end of this volume.

* See before, p. 150.

† See before, p. 218, 363.

‡ *Chalmer's*, (in his *Annals*, p. 123, who is herein followed by *Robertson*,) has without doubt, committed a small mistake in saying, that “in pursuance of the ordinance” of 1650, which he had just then stated, “the ruling powers *instantly* appointed commissioners, and detached Sir George Ayscue, with a powerful fleet, &c., to reduce all their enemies to submission,”—meaning the rebellious colonies.

CHAP. V. sition, that uncertainty was yet deemed by the leaders in parlia-
1651. ment to hang upon the progress of their cause. Their divisions among themselves and consequent perplexity in the management of their affairs might also occasion delay. The arrival of the young king in Scotland, in June, 1650, had occasioned the English parliament to recall Cromwell from his successful progress in the subjugation of Ireland, in order to send him with an army into Scotland to counteract the Presbyterians there in the use they were making of his majesty's presence among them. On Cromwell's marching into that kingdom, the Scots raised an army to oppose him, but by their bad management they suffered him to defeat them at Dunbar; "the Lord," as he said, "having delivered them into his hands." This defeat had a temporary favourable effect upon the situation of the young king in Scotland; who had been, indeed, ever since his arrival there, but in a sort of state imprisonment. The Scots now crowned him, (January 1, 1651, N. S.) and rallied their army under his banners. The king taking advantage of this apparent loyalty, persuaded the leaders of the Scotch army to march with him into England, where he flattered himself, that with such a show of force under him, the English royalists would immediately flock to his standard. The king, with the Scotch army, was in so fortunate a position, that he was enabled to give Cromwell the slip, and was on his march for a day or two before Oliver knew where he was. The Scotch army marched with so much rapidity, that Cromwell could not overtake them, until they had halted for rest at the city of Worcester, in England. Coming up with them here, on the 3d of September, (1651,) he gained his ever memorable battle of Worcester,—his "crowning mercy," as he called it; when he entirely routed the Scotch army, killed many, took a considerable number of prisoners, and obliged the unfortunate king to betake himself to disguise and secrecy in order to effect his escape out of the kingdom.

It is from this victory, that historians date the commencement of Cromwell's uncontrolled power over the English commonwealth. His son-in-law Ireton, and after him Ludlow, had by this time completed the conquest of Ireland; and Monk, whom he had left in Scotland, with a detachment of the English army,

Sir George was not sent out against *Barbadoes* for more than six months after the passage of the ordinance; nor were commissioners appointed for the "reducement" of the colonies on the Chesapeake until September, 1651, near a twelve month after the ordinance.

soon reduced that kingdom to submission. Cromwell, after a few days rest at Worcester, returned in triumph to London on the 21st of September, to commence his dictatorship of the commonwealth. As he had been absent out of the kingdom, at the head of the English armies in Ireland and Scotland, since the middle of the year 1649, much of the business of the parliament had been transacted without his immediate privity. We must therefore impute these negotiations, which had lately taken place between the English commonwealth and the states of Holland, to the parliamentary leaders of the independent party. While these leaders were uncertain of the duration of their power, they were reluctant to come to an open rupture with the Dutch republic; especially as they were constantly in dread of the influence of the house of Orange, (who were nearly connected by blood with the royal family of England,) to induce the states to join in restoring the king. The prince of Orange's death, which occurred in the latter end of the year 1650, leaving his power and influence to a posthumous son now an infant, presented to the parliament a promising opportunity of forming a strict defensive alliance between the two republics. They accordingly, in the beginning of the present year, 1651, sent two ambassadors, (Oliver St. John and Walter Strickland,) for the purpose of negotiating this alliance. But the states, uncertain as to the progress of the king, (who was then in Scotland, lately crowned there, as just mentioned, and apparently at the head of a loyal army of Scots,) rejected the terms offered to them by these envoys; being probably also influenced thereto by the party of the house of Orange, who were not yet entirely suppressed. In the discussion of these terms, it seems, the Dutch presented a long list of debts due on account of the depredations of the English upon the trade of Holland. The English ambassador rejected the account, because it chiefly consisted of Dutch vessels taken in an illicit trade with the *revolted English plantation*;* referring, as may be presumed, to the before mentioned prohibition of all foreign trade with Barbadoes and Virginia, and the colonies therein mentioned, by the parliamentary ordinance of the 3d of October, 1650. These and other difficulties broke off the negotiation, and the English ambassadors returned home in July of the present year, sorely vexed and disgusted with the Dutch; particularly *St. John*, who had received some personal insults at

* Mod. Univ. Hist. vol. xxxi. p. 365.

CHAP. V. the Hague by the partizans there of the Stuart family.* He had
 1651. been an eminent lawyer and barrister, was at the time of his embassy chief justice of one of the superior courts of Westminster Hall, and consequently on his return availed himself of his extensive influence with the leaders of the parliament in promoting the subsequent war with the Dutch. It is observed also, by an historian of great authority,† that “Cromwell consented to this war, *of which he saw no necessity*, in pure compliance to *St. John*, and some others, who appeared extremely incensed against Holland.” It may be proper also to add here, that this same historian states, that some of the leaders in parliament were actuated, in the promotion of this war with the Dutch, by a secret motive founded in the hope, that it would tend to diminish Cromwell’s power. The Dutch war would occasion an increased expenditure in the maritime force of the nation; which expenditure would bring about a reduction, if not a disbanding, of the English armies; and thus Cromwell’s projected military despotism would be undermined. Be these causes, however, what they may, it seems certain, that soon after the return of the ambassadors from the Hague, in July of this year, as before mentioned, war with the Dutch was finally resolved on by the parliament. Prior to their return, however, and before the decisive battle of Worcester, some steps had been taken, early in the spring of this year, to check the progress of the Dutch trade; and, for that purpose, a fleet had been prepared during the preceding winter, or fitted out early in the spring, to break up the Dutch trade with Barbadoes, as well as to conquer the isle of

* As these insults to *St. John* are alleged to have had a strong operation in accelerating the English war with the Dutch at this time, curiosity may be gratified in briefly mentioning the circumstances, as they are related in the *Mod. Univ. Hist.* vol. xxxi. p. 364. “The duke of York was, at the time of the arrival of this embassy, at the Hague, where *St. John*, the English envoy, had the presumption in a public walk to dispute the precedence with him; which being observed by the prince palatine,” (Charles Lewis, count palatine, grand-son of James the first, of England,) “his generous mind was fired at the indignity. *He pulled off the envoy’s hat, and bade him respect the son and the brother of his king.* *St. John* put his hand upon his sword, and refused to acknowledge either the king or the duke of York; but the populace taking part with the young prince compelled *St. John* to seek refuge in his lodgings. Complaints were made by the ambassador to the states-general, who advised the duke of York to retire to one of the prince of Orange’s palaces in the country, and expressed their sorrow for the accident on an apology to the English minister.”

† *Rapin’s Hist.* (Tindal’s edit.) vol. xi. p. 58; and in this he seems to correspond with the similar statement of lord Clarendon, in his *Hist.* (fol. edit.) p. 636.

Scilly, which at that time still held out for the king. Sir George Ayscough, who had been appointed to the command of this fleet, having accomplished the reduction of these isles, put into Fal-mouth for further orders. Some delay occurring to him here, in the receipt of his further orders from London, he did not sail from thence again until about the middle of May, 1651, when, having secret instructions also to cruise upon the coasts of Spain and Portugal for the squadron under prince Rupert, who, as the report thereof prevailed in England, had it in contemplation to cross the Atlantic, and keep possession of all the British American colonies, particularly Barbadoes and Virginia, in his majesty's name and for his use, Sir George did not arrive at Barbadoes until the 16th of October, 1651, where he met with a stouter resistance from the loyal inhabitants of that island, than he had reason to expect.*

CHAP. V.
1651.

In the mean time, a *distinct* expedition was planning in England for the reduction of Virginia. In the month of September, 1651, the *council of state*, acting as the *executive* branch of the commonwealth, took this subject into consideration, and referred it to a committee of themselves, then before appointed, "for the carrying on the affaires of the admiralty."† This committee appointed captain Robert Dennis, Mr. Thomas Stagge, and captain Edmund Curtis, who were then officers in the navy, or inhabitants of Great Britain, together with Mr. Richard Bennett and captain William Clayborne, then residents of Virginia, to be "commissioners for the reducing Virginia, and the inhabitants thereof, to their due obedience to the commonwealth of England." In pursuance of this appointment, the committee proceeded to draw up certain "instructions, for the better directions and proceedings of these commissioners, in the management of that service." In the first draught of these instructions "*Maryland* was at first inserted, to be reduced as well as *Virginia*, but the committee being afterwards satisfied by all the merchants that traded thither, (who were engaged to assist with their ships in the reducement of Virginia,) that *Maryland* was not in opposition to the parliament; that captaine *Stone*, the lord Baltimore's lieutenant there, was generally knowne to have beene alwayes zealously affected to the parliament, and that divers of the parliament's friends were by the lord Baltimore's especial

Instruc-
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commis-
sioners for
the "re-
ducement"
of Virgi-
nia.

* Mod. Univ. Hist. vol. xli. p. 140.

† The council of state were a numerous body, consisting of thirty-nine persons. See their names in *Hume's Hist.*, ch. lx.

CHAP. V. directions received into Maryland, and well treated there, when
 1651. they were faine to leave *Virginia* for their good affections to the parliament; then the said committee thought it not fit at all to disturbe that plantation; and, therefore, in the presence of many of the said merchants, and of the two chief commissioners, Denis and Stag, caused *Maryland* to bee struck out of the said instructions; and the council of state did thereupon give license to many ships to trade at that time to *Maryland*, but would not permit any to goe to *Virginia* till that colony were reduced to obedience.”* The instructions were accordingly prepared, as we now see them, bearing date, “Whitehall, 26th September, 1651;” without any express directions therein for the reducing of *Maryland*. We shall soon see, however, that the ingenuity of Bennett and Clayborne contrived a construction of them, sufficient to authorise them, in their opinions, to reduce Maryland as well as Virginia.

These instructions, after referring to the before mentioned ordinance of October 3, 1650, “for prohibiting trade with Barbadoes, Virginia,” &c., wherein powers were given to the council of state, “for the reducing and governing the said plantations,” &c., and stating, that “a fleet was now set forth, victualled, armed, and manned, under the command and conduct of captain Robert Denis, to effect, by the blessing of God, the ends aforesaid,” directed the commissioners, that “upon their arrival at Virginia, they, or any two or more of them, (whereof captain Robert Denis to be one,) should use their best endeavours to reduce *all the plantations within the bay of Chesopiaik* to their due obedience to the parliament of the commonwealth of England.” Maryland being a “plantation within the bay of Chesopiaik,” it was upon this clause, that the commissioners rested the justification of their subsequent conduct in respect to that colony. To effectuate this purpose of reducing these colonies, the commissioners were empowered to use, in the first place, persuasive and lenient measures, as granting pardons, &c.; but, if necessary, “all arts† of hostility, that lie in their power;” par-

* The above quotation is from the pamphlet, before cited, entitled, “A Refutation of Babylon’s Fall,” &c., by Mr. John Langford; who, being a sensible and intelligent *cotemporary* writer, is to be relied on.

† This expression—“arts of hostility,”—is so in the original, as published in *Hazard’s Collections*, (vol. 1, p. 557.) It is possible, however, that in copying, Mr. Hazard, or some one for him, might have mistaken the word *arts* for *acts*. The former word carries with it an *insidious*, and therefore, *odious* sense. After

ticularly the enlistment of servants within the colony into their army, and the discharging and setting free from their masters all such persons so serving as soldiers.* They were also to "cause and use the several acts of parliament against kingship and the house of lords to be received and published; as also the acts for abolishing the book of common prayers, and for subscribing the engagement, and all other acts herewith delivered you."

It must be acknowledged by all candid persons, that the powers, vested by this clause in the commissioners, carried the authority of an English parliament over the colonies, to a higher tone than was ever attempted before or since by any English or British parliament. Supposing that the parliament had power to alter and change the *form of government* adopted and used by any one of the colonies, and to change such government from a monarchy to a democracy, (of which some doubts might be entertained,) yet assuredly the abolition of the *form of prayer*, in the use of which almost every inhabitant of *Virginia* had been bred up from his infancy, and to which he was perhaps religiously attached, was such a gross violation of every idea of *religious liberty*, that at this day we cannot but view the authors of such a measure as base hypocrites, renouncing those very principles, by which they had artfully worked their way to the tyranny which they now exercised. What those "other acts" of parliament were, which were now also delivered to the commissioners to be enforced, we are no where informed. It is evident, that the parliament claimed a right "to bind the colonies in all cases whatsoever." Nor did the favourable terms, obtained by *Virginia* on its subsequent capitulation, so much extolled by one of its historians,† remedy in a great degree this notorious violation of religious liberty; for, the commissioners graciously condescended therein to permit the use of the book of common prayers for only "one year ensuing."‡

The three commissioners, in England, Dennis, Stagge, and Curtis, being now furnished with their commission and instruc-
The commissioners

lenient and persuasive measures, "*acts of hostility*," would naturally follow. But the enlistment of *servants*, being specially directed by them, the word "*arts*" seems to have been an appropriate term.

* As the word *servants* was here used, it is probable, that it was not intended thereby to include *negro slaves*; but only *indentured* white servants, then serving in the colony according to the usage of that time.

† See Burk's Hist. of *Virginia*.

‡ See these "Instructions," just above stated, at large in note (LXXX.) at the end of this volume.

CHAP. V. tions, must have sailed on their expedition, soon after the date of
 1651. the latter. A small fleet of ships, belonging to the English mer-
 sail on chants of the Virginia trade, "who had engaged to assist with
 their ex- their ships in the reducement of Virginia," as it is stated,* sailed
 pedition. with them. On board of these merchant ships were embarked
 a regiment of seven hundred men, and also, extraordinary as it
 may appear to us at this day, about one hundred and fifty of the
Scotch prisoners, who had been taken at the battle of Worcester,
 about a month before ; and who were transported to be sold as
 servants in Virginia.† It was the common usage of navigators
 in those times, in their voyages from Europe to America, to
 make their route to the southern latitudes, as far as the Azores,
 in order to have the benefit of the trade winds across the Atlan-
 tic. For this purpose, or possibly with a view of reinforcing
 Sir George Ayscue, who was at this time endeavouring to get
 possession of Barbadoes, the fleet under captain Dennis took the
 same route. Sir George had been with his fleet, ever since his
 arrival at Barbadoes on the 16th of October, (1651,) until the
 middle of December following, hovering about the harbours of
 that island, before he could venture to land ; such was the bold
 and spirited resistance of those islanders under lord Willoughby,
 their governor. The Virginia merchant fleet, perhaps directed
 to make Barbadoes their place of rendezvous, fortunately for Sir
 George, arriving about the time last mentioned, he with the as-
 sistance of the regiment and the Scotch prisoners, before men-
 tioned, made good his landing, and took the principal fort of the
 islanders ; who soon after, through lord Willoughby their govern-
 or, made almost as favorable a compromise with Sir George Ays-
 cue, as the Virginians and Sir William Berkeley afterwards did
 with the Virginia commissioners. Whether the two principal
 commissioners for Virginia, captain Dennis and Mr. Stagge, ar-
 rived at Barbadoes, with the merchant fleet just mentioned, is
 not to be determined with certainty. From the omission of any
 mention of either of them, particularly captain Dennis, in the
 histories of Barbadoes, at that critical juncture of the reduction
 of that island by Sir George Ayscue, it may be inferred, that
 they did not get so far on their voyage to Virginia. It is cer-
 tain, that they never arrived at Virginia, in pursuance of their

* Langford's "Refutation of Babylon's Fall," &c.

† Oldmixon's Brit. Emp. in Amer. vol. ii. p. 21, and the *Mod. Univ. Hist.* vol. xli. p. 142.

intended expedition. For the ascertainment of this fact, we are indebted to our respectable *Maryland* author, before quoted. "In this expedition to Virginia," (says he,) "captaine Dennis and captaine Stag, the two chief commissioners, were *cast away* outward bound, in the admiral of that fleet, which was sent from hence" (England) "upon that service, and with whom the original commission for that service was lost. But, captain *Curtes*, having a copy of the said commission and instructions with him in another ship, arrived safe in Virginia, and there being also nominated in the royal commission two other persons *resident in Virginia*, that is, Mr. *Richard Bennet* before mentioned, and captain *Clayborne*, (known and declared enemies of the lord Baltimore,) they, together with captain *Curtes*, proceeded to the reducement of *Virginia*, which was effected accordingly."* Whether captain Curtis touched at Barbadoes, or not, in his voyage, or whether the Virginia merchant fleet, before mentioned, together with the regiment and *Scotch* prisoners on board them, came to Virginia, in conjunction with captain Curtis, or to meet him, we are not informed. From the circumstance of captain Curtis's not arriving at Virginia until the last of February or first of March following, it may be inferred, that he had designedly delayed in the West Indies, and probably at Barbadoes, during the winter months of December and January, in order to arrive at Virginia, as he did, in the earliest commencement of mild weather in the spring of the year 1652, N. S. What passed at the "reducement" of Virginia, or a detail of the resistance of Sir William Berkeley and the Virginians to captain Curtis's armament, appertains not to our narrative here. It may be allowable, however, to observe, that the extraordinary favorable terms obtained by the Virginians and their governor on this occasion, might possibly be owing to two obvious circumstances attending the transaction, rather than to any great and powerful resistance they were able to make in their defence. The failure of captain Dennis's arrival must have considerably diminished captain Curtis's force; and, as the two other commissioners—Bennet and Clayborne, (without whose co-operation Curtis could do nothing,

CHAP. V.
1651.

Captain
Curtis ar-
rives in
Virginia.
1652.

* *Langford's* "Refutation of Babylon's Fall," &c. Mr. Langford's statement, as above, is confirmed, beyond a doubt, by the want of the signatures of Messrs. Dennis and Stag, the two other commissioners, to the articles of capitulation with Virginia. By their instructions, nothing was to be done without the assent of captain Dennis; but, in case of his mortality or absence, then captain Curtis was to act as chief in command.

CHAP. V. agreeably to their instructions,) were, on his arrival at James
 1652. town, then residents in Virginia, and consequently within the power of Sir William Berkeley and those who supported him in his measures, it ceases to be wonderful, that such extraordinary favorable terms were obtained by them.* Sir William, however, knowing that continued resistance would finally be useless, availed himself of those favorable circumstances, to enter into articles of capitulation and surrender of the colony to the three commissioners, as he did, on the twelfth of March, 1651, O. S.

A circumstance attending this reducement of Virginia, as it regards *Maryland*, ought not to be here omitted. It is stated by our respectable Maryland author, before quoted,† that “captain *Stone*, being then the lord *Baltimore*’s lieutenant of *Maryland*, did actually assist them therein.” This fact throws great light on the religious as well as political disposition of those persons, who now administered the government of Maryland; and, as they probably acted under the direction of lord Baltimore, tends to prove, not only that his lordship had made it his ruling policy, to allow within his province a liberal indulgence to all the different sects of religion then prevalent, but more particularly also, what might be deemed by some, a criminal acquiescence of the Roman Catholics in Maryland, in imitation of those in Ireland, at least as far as his lordship’s influence could operate, in concurring with the Puritans in measures calculated to destroy the

* It must be acknowledged, that this supposition, of Bennett and Clayborne being then actually “residents in Virginia” at the time of the arrival of captain Curtis, seems to be contradicted by an expression in the act of indemnity, granted by the commissioners to the inhabitants of Virginia on their capitulation, to wit,—“We the commissioners, &c. having brought a fleet and force before James city,” &c. But this expression is quite too feeble to contradict a stronger expression in the *instructions* to the commissioners from the council of state, viz.—“Such of you as are here,” that is, in *England*, “are to repair on board the ship John,” &c. This necessarily demonstrates, that two at least of the five commissioners were not in England at the time of the instructions. The strongest probability is, that they must have been then, at the time of Curtis’s arrival, as well as at the time of the instructions, “residents in Virginia,” as expressly stated by Mr. Langford, a cotemporary author. Two of the three commissioners, who transacted all the business of the capitulation, being themselves *Virginians*, would, therefore, very naturally give themselves the most favorable terms, and most probably by personal stipulation with Sir William Berkeley, prior to the surrender, promised to him all he could reasonably ask, as well for himself as for the colony. The story of the two counsellors, who had goods on board the fleet, mentioned by all the historians of Virginia, might co-operate and assist Bennett and Clayborne in raising a faction against Sir William too powerful for him to oppose.

† Langford’s “Refutation of Babylon’s Fall,” &c.

established religion, and necessarily with it the government, of England. CHAP. V.
1652.

But this temporizing policy of captain Stone failed, as it seems, in producing those favorable consequences to Maryland, which he had, without doubt, expected from it. Bennett was too much of a Puritan, not to be anxious to put the government of Maryland on such a basis, that his brethren, whom he had been chiefly instrumental in fixing on the Severn in that province, might have all the influence therein, which they could wish for; and Clayborne most probably fully calculated on a restoration to all his rights and claims on the isle of Kent.

After the surrender of Virginia, these two commissioners, with captain Curtis, proceed to Maryland;* and, as we may presume, to the seat of government at St. Mary's. Arriving here about the last of March, 1652, N. S. and conceiving themselves authorised by their commission and instructions, before mentioned, to reduce "all the plantations within the bay of Chesopiaik" to their obedience to the commonwealth of England, of which Maryland was, without doubt, one, they at first proposed to governor Stone and the council of the province, (as appears from their proclamation of the 29th of March, hereafter stated,) "that they should all remain in their places, conforming themselves to the laws of the commonwealth of England in point of *government* only, "and not infringing the lord Baltimore's just rights."†

The commissioners proceed to Maryland, which submits.

* It has been before stated, on the authority of Mr. Langford, that Mr. Richard Bennett, (whom we have before seen active in procuring preachers from Boston for the Puritans in Virginia,) was one of those, who, being driven out of Virginia, came and settled at Providence on the Severn in Maryland. On the same authority it is stated also, that Mr. Bennett was a resident in Virginia, when he was appointed one of the commissioners, and when captain Curtis arrived there. This seeming contradiction is reconcilable by supposing, that Mr. Bennett's residence at Providence or Ann Arundel was merely temporary, and that as soon as he had seen his brethren fixed on the Severn, he returned to his residence in Virginia. This is corroborated by the circumstance, that although he was a man of the first influence among those settlers at Providence, yet we do not perceive his name in any subsequent document or important proceedings of Maryland from the time of that settlement to the present period of his appearing as one of the commissioners.

† This appears from the proclamation of the commissioners of the 29th of March, 1652, inserted in note (LXXXI.) at the end of this volume. The "just rights of lord Baltimore," here referred to, we may suppose to have been merely his right of receiving his *rents* for lands already granted by him, and possibly also of continuing to exercise the right of granting lands within the province on the condition, heretofore used by him, of paying the customary rents reserved thereon.

CHAP. V. This conformity to the laws of England seems to have been intended principally in two particular respects ; to wit :

1652.

First. "That all writs, warrants and process whatsoever be issued forth in the name of the keepers of the liberty of England, by authority of parliament."—This was agreeable to the law or ordinance of parliament, made in March, 1649, soon after they had put the king to death, whereby the custody of "the great seal of the parliament of the commonwealth of England," which they had caused to be new made, was committed to a certain number of persons, (three,) who were styled,—*Custodes Libertatis Angliæ, autoritate parliamenti*,—(keepers of the liberty of England, by authority of parliament;) and all writs, process, and proclamations, or public orders, were for the future to be in their name.

Secondly. "That all the inhabitants of the province," (including the governor and council, and other officers of the province,) "should subscribe the test, called the *engagement*." This also was in conformity to an ordinance of parliament, made about the same time as that just before mentioned; whereby a new oath or test was prescribed, instead of the old oath of allegiance, of the same tenor or form, as that now required in Maryland by these commissioners, to wit:—"We, whose names are subscribed, do promise and engage ourselves to be true and faithful to the commonwealth of England, as it is now established, without king or house of lords."

To this second or latter proposition, that is, to take the *engagement*, governor Stone and the rest of lord Baltimore's officers of his government in the province readily assented, and (according to our Maryland author,*) "declared, that they did in all humility submit themselves to the government of the commonwealth of England, in chiefe under God."

In respect to the former proposition, to wit, that all writs, &c., should be issued in the name of the keepers of the liberty of England, and not in the name of the lord proprietary, as they were wont to be:—(to pursue the words of our last cited author,)—"In this, they desired to be excused, because, they did conceive, the parliament intended not to divest the lord Baltimore of his right in his province, and that they understood out of England, that the council of state intended not, that any alteration should be made in Maryland; that the king's name

* Langford's "Refutation," &c.

was never used heretofore in the said writs, but that they had always been in the name of the lord proprietary, according to the privileges of his patent, ever since the beginning of that plantation. That the act in England for changing of the forms of writs, declared only, that in such writs and processes, where in the king's name was formerly used, the keepers of the liberty of England should for the future be put instead thereof. That the continuing of the writs in the lord proprietary's name was essential to his interest in the province, and therefore they could not, without breach of trust, concur to any such alteration.

"Whereupon," (according to our author,) "the said commissioners demanded of captain *Stone* the lord Baltimore's commission to him; which he shewed them; and then, without any other cause at all, they detained it, and removed him and his lordship's other officers out of their employment in the province under him, and appointed others to manage the government of Maryland independent of his lordship."

The further reasoning of this author upon this transaction seems to be too forcible and pertinent on the present subject to be here omitted; especially, as his work is now scarcely attainable by common readers, and what he wrote was from a more intimate knowledge of the affairs of Maryland at that time, than almost any other man; he having been, as he states in his pamphlet, "employed by my lord Baltimore in his affairs relating to that province, both here and there," (in England and in Maryland,) "for above twenty yeares last past."* After the foregoing statement of the proceedings of these commissioners, he observes:—"By which it appears, Mr. *Bennett* and captain *Claybourne* took upon them an authority much contrary to the intention of the council of state, and indeed contrary to common sense and reason; for, certainly if the council had had any cause to have altered their mind in that particular, of Maryland, after they had struck it out of the said instructions, they would have caused it to have been put in againe by the same name, whereby their intention might have been clearly understood; much lesse could they have any intention of reducing

* Mr. John Langford was, by commission dated March 24th, 1641, appointed surveyor-general of all the castles, lordships, manors, forests, lands, &c., of his lordship within the province of Maryland "during his natural life;" a tenure of office so uncommon within the province, as bespeaks the confidence which was placed in him by his lordship. He was also a member of the council for several years, as appears by the two commissions for that purpose of 1642 and 1643.

CHAP. V. any place that was not in opposition against them, but in due
 1652. obedience; so as if Maryland had been by any mistake put in by name to be reduced, upon a supposition in the councell that it had been in opposition, yet they could not in reason intend, that in case their commissioners had found, when they came upon the place, (as they did,) that it was not in opposition, that they should reduce it, or prejudice any man's right upon that account. So that whatsoever was done in Maryland by the sayd Mr. Bennett, then governor of Virginia, and the other commissioners, was done without authority."

The commissioners, however, having taken captain Stone's commission from him in the manner stated, (not perhaps in a very fair or honourable way,) they proceeded to publish their orders for the future arrangement of the government of the province, in a proclamation, bearing date the 29th of March, 1652; in which, after referring to their commission and instructions, before stated, and to the propositions before mentioned, made by them to governor Stone and the council, and their denial and refusal of the same, they declared their orders, in substance, as follows:

"That all writs, warrants, and process whatsoever, be issued forth in the name of the keepers of the liberty of England by authority of parliament; and that they be signed under the hand of one or more of the council hereafter named, viz. Robert Brooke, esqr., colonel Francis Yardley, Mr. Job Chandler,* captain Edward Windam, Mr. Richard Preston, and lieutenant Richard Banks.

"That the said council of Maryland, first taking the engagement, do cause the same to be tendered to all the inhabitants in these words:—[as herein before stated.]

"That the said council of Maryland, or any two or more of them, whereof Robert Brooke, esqr., to be one, do govern and direct the affairs thereof;† and hold courts as often as they think

* Mr. Brooke and Mr. Chandler had been members of the council before, under lord Baltimore. The former by commission bearing date, September 20th, 1649, before stated, and the latter by one dated August 1st, 1651; by which last commission Mr. Chandler was also made his lordship's "receiver-general." These appointments of Mr. Chandler appear from the preamble to his commission, to have been made by lord Baltimore himself, through the special recommendation of governor Stone, and the friendship, therein professed by his lordship, for Mr. Richard Chandler, of London, merchant, brother to Mr. Job Chandler.

† From this it would appear, that Mr. Brooke was to act as governor, or president of the council, in the room of governor Stone.

fit for that purpose; as also, that they summon an assembly to begin on the 24th of June next coming, the burgesses whereof are only to be chosen by such freemen as have taken the said *engagement*; and that neither by the said council, nor in the said assembly, any thing be acted contrary to the laws of England there established, or to their obedience due to the commonwealth of England.

CHAP. V.

1652.

“That the commissions for the governor and council,” (that is, lord Baltimore’s commissions to governor Stone and his council,) “be hereby declared void and null, and to be delivered into the hands of us the commissioners; as also that all records, and other matters and things relating to the government of Maryland, be delivered into the hands of the council herein by us nominated.*”

Thus was the province of Maryland completely reduced to an obedience to the parliament of the commonwealth of England, and all authority and power of the lord Baltimore within the colony, which he had planted at so much cost and reared with so much care, entirely taken out of his hands, with the probable prospect, that it would never again be restored to him.

* See this proclamation of the commissioners at large, in note (LXXXI.) at the end of this volume.

CHAPTER VI.

The state of the province after the "reducement"—The commissioners return to Virginia—The commissioners return to Maryland again—The government reinstated by them in captain Stone—Clayborne's claim to the isle of Kent—A treaty with the Susquehanock Indians—Complaints against Captain Vaughan, as commander of the isle of Kent—Hostilities of the Eastern Shore Indians—Grants of lands from lord Baltimore neglected in Anne Arundel and the isle of Kent—A scarcity of corn—Origin of the famous navigation act—Hostilities apprehended from the Western Shore Indians—Affairs of England in relation to Maryland—Proceedings of governor Stone relative to patents for lands and issuing of writs—The early contests about the lands on the Delaware—State of the Roman Catholic religion at this time in Maryland—Cromwell proclaimed in Maryland as lord protector—Calvert county first erected—Governor Stone revolts, and the province is again "reduced"—The government vested in captain Fuller and a council—An assembly called, which meets—Their proceedings—Governor Stone re-assumes his office and powers as governor—organizes a military force—And marches towards the Severn—The battle on the Severn—The estates of the *delinquents*, (governor Stone's party,) sequestered—Proceedings in England relative to these provincial disputes—Fendall appointed governor—He is arrested and imprisoned by the Puritans—The government of England favourable to lord Baltimore—The agents, Bennett and Matthews, persevere in their opposition to his lordship—Lord Baltimore's instructions to his governor—Lord Baltimore sends his *brother* Philip Calvert to Maryland—Mr. Barber appointed deputy governor in the absence of governor Fendall—Fendall goes to England—The divided state of the province—Another Puritan assembly is called, and meets—The agreement between lord Baltimore and the agents, Bennett and Matthews—Lord Baltimore's instructions to his governor for the time being—Governor Fendall returns to Maryland—Negotiations between the proprietary and Puritan governors for a surrender of the province to the former—The final agreement and surrender in consequence thereof.

CHAPT. VI.

1652.

The state of the province after the "reducement."

The affairs of the province, immediately succeeding the "reducement" thereof, appear to have remained for several months in considerable uncertainty. Governor Stone and Mr. Hatton, the secretary, in consequence of their rejection of the terms proffered to them by the commissioners seem to have been considered for some short time only as private citizens. Hr. Hatton, however, appears to have found some favour with the new council; for, on his request to them for that purpose, they made an order of council, dated the 22d of April, 1652, that any inhabitant of the province, whom Mr. Hatton himself might appoint, should be authorised to collect, or "levy by execution in the usual manner, all or any such fees as were due to him." This

order was expressed to be, "in the name of the keepers of the liberties of England by authority of parliament," and signed by "Robert Brooke" and "Richard Banks," two of the council appointed by the commissioners, as before mentioned. There appears, from a subsequent document, to have been a family connection between Mr. Banks and Mr. Hatton, which possibly might account for this special favour, though common justice would have been a sufficient basis for it.

The commissioners must have returned to Virginia, soon after they had completed the "reducement" of Maryland, on the 29th of March as aforesaid, or at least by the latter part of April; for, on the 30th of that month, we find them there, engaged with the *burgesses* of Virginia, in organizing a new government for that province. The tenor of the important act for this purpose was thus:—

"James city, April 30th, 1652.—At the *general assembly*.—After long and serious debate and advice for the settling of the government of Virginia, it was unanimously voted and concluded, *by the commissioners* appointed by the authority of parliament, and by all the *burgesses* of the several counties and places respectively, until the further pleasure of the states be known,* that Mr. Richard Bennett, esq., be governor for the ensuing year, or until the next meeting of the assembly, with all the just powers and authorities that may belong to the place lawfully. And likewise that colonel William Clayborne be secretary of state, with all belonging to that office,† and is to be next in place to the governor; next, that of the council of state be as follows:—[naming them in particular,] "and they shall have power to execute and do equal justice to all the people and inhabitants of this colony according to such instruction as they have or shall receive from the parliament of England, and according to the known law of England, and the acts of assembly here established." A further clause provided, that the said governor, secretary, and council should also have such additional powers and authorities, as the grand assembly should from time to time grant to them.‡

* This must mean—"the pleasure" of the commonwealth of England.

† These expressions, relative to the offices of governor and secretary, must have vested in these officers all the powers of any former governor or secretary within that province.

‡ See this important State Paper at large in *Burk's History of Virginia*, vol. 2, p. 93.

CHAPT. VI. As Mr. Bennett and Mr. Clayborne were now to act in a most authoritative manner over the province of Maryland, it was deemed proper to state, as above, the extraordinary powers assumed by them or vested in them by the assembly of Virginia over that neighbouring colony also. Clothed with these ample powers in the parent colony, it was not for the weaker daughter to exhibit any symptoms of resistance to them or their mandates. We shall see them, accordingly, ruling with unresisted sway over both these two little distant portions of the British dominions. It is not to be supposed, considering the political sentiments of the people of Virginia but a few months before, that Mr. Bennett could have been elected governor of that province by a free and unbiassed election; and it was absolutely necessary, that his fellow labourer Clayborne, should also be provided for "next in place to the governor." It is probable also, that such councillors were nominated, whose political as well as religious opinions approximated to Puritanism, as nearly as could be selected. But, notwithstanding the boasted independence and the apparent security of the rights and privileges of Virginians, acquired by the terms of the preceding surrender and capitulation, on the 12th of March, we here find in this last proceeding of the burgesses, on the 30th of April, a tame surrender of all those rights and privileges to two creatures of the English commonwealth, who were in all things to act, "according to such instructions, as they should receive from the *parliament of England*."

Commissioners return to Maryland again.

Mr. Bennett and Mr. Clayborne, having thus provided for themselves honourable, and perhaps profitable, stations in Virginia, returned to Maryland again, about the latter end of June, to make a more satisfactory settlement of the government of that province also. It is remarkable, that both the governors of Maryland, as well as of Virginia, when these commissioners took those provinces out of their hands, had acquired, by their highly correct conduct in their offices, as we may presume, extraordinary popular favour with the inhabitants of each of their provinces. It was so much so with Mr. Stone, that, according to the statement of the commissioners themselves, in the order for the settlement of the government of Maryland, which they were now about to make, it was the manifest "desire of the inhabitants, that captain Stone should reassume his former place of governor." As the settlement of the government, on the

29th of March, as before stated, was a temporary measure only, the commissioners felt themselves at liberty to re-organize the government of Maryland according to those expressed wishes of the inhabitants. It would seem, that a kind of excuse, or *salvo jure*, was invented, in order to justify captain Stone in his alteration of mind respecting his acceptance of the office of governor upon the same terms as first proposed to him; that is, as the commissioners state it, in their proclamation for that purpose, on the 28th of June, that he, and Mr. Hatton as secretary, were left out of office, on the settlement of the government on the 29th of March last, "upon some misapprehension or misunderstanding, as they" (captain Stone and Mr. Hatton) "allege, in that particular of issuing out writs and all other process whatsoever, in the name of the keepers of the liberties of England by authority of parliament;" and that captain Stone was "content to reassume his former place," &c. on condition, that he might "reserve and save to himself, as also to the aforesaid Mr. Thomas Hatton, Robert Brooke, esqr., and captain John Price, their oaths to the lord Baltimore, lord proprietor of this province, until the pleasure of the state of England be further known." If the reasoning assigned by governor Stone, when he first rejected the proposals of the commissioners, on the 29th of March, was well founded, to wit, that they could not change the style of the writs, &c., without an infringement of lord Baltimore's proprietary rights, which would be a violation of their oaths of office, it is difficult to conceive, how they could now agree to such alteration of the style of writs and the process, and still *reserve* and *save* to themselves their oaths to the lord proprietor, even though it should be temporary, until the pleasure of the state of England could be known. From subsequent circumstances it may be conjectured, that captain Stone, upon more mature reflection, thought it best for the lord proprietary's interest, and perhaps for his own, to temporise a little with the commissioners, and to reassume his office of governor on the terms proposed. Accordingly, two of the commissioners, Richard Bennett and William Clayborne,* with the advice and consent of the council and others the inhabitants," as they state, issued their order or proclamation, bearing date the 28th of June, 1652, "that captain Stone, esqr., be the governor, and

CHAPT.
VI.
1652.

The go-
vernment
reinstated
by them in
captain
Stone, &c.

* Captain Curtis, being a sea faring man, must have sailed from America by this time; for we do not see his name affixed to any further document on our records.

CHAPT. Mr. Thomas Hatton, Robert Brooke, esqr., captain John Price,
 IV. Mr. Job Chandler, colonel Francis Yardley, and Mr. Richard
 1652. Preston, be the council for this province, who are to govern, order, and direct the affairs thereof in all matters according to their former power, and the order or proclamation aforesaid." Thus, two of the gentlemen of the former council, created on the 29th of March last, were now left out, to wit, captain Edward Windham, and lieutenant Richard Banks, and Mr. Thomas Hatton, (who was also secretary of the province,) and captain John Price, put in their places. For this alteration our documents furnish no assigned cause. The rule of conduct prescribed to the governor and council, by the last expression in the above clause of the order, to wit, "according to the former power, and the order aforesaid," must have meant, that the governor and council were to act in all things according to their former commissions from the lord proprietary, except perhaps, that instead of the oath of allegiance to the king, the *engagement* was to be taken, and that (agreeably to the present order) all writs, process, &c., should for the future issue in the name of the keepers of the liberty of England, and not in that of lord Baltimore as heretofore. The commissioners conclude their proclamation with a supplementary order, very much to the credit of governor Stone:—"And since the government is so settled, as is known to be, *to the good liking of the inhabitants*, it is conceived, for that and several other reasons, that there is no absolute necessity of a general assembly at present." It will be recollected, that, by the order or proclamation of the commissioners, of the 29th of March last, the council, thereby erected, were "to summon an assembly to begin on the 24th of June next coming." No evidence appears, from either the records or otherwise, that such assembly ever met or were summoned. What those "other reasons" were, besides the popular restoration of governor Stone, referred to by the commissioners, for the prorogation of the assembly, we are no where informed. Perhaps one of them might be, that the colony was considered to be in too perturbed a state for the deliberations of a legislative body.*

After so much disturbance in Maryland, as had heretofore taken place in relation to captain Clayborne's claim to the isle

* See this last mentioned order or proclamation, of the 28th of June, 1652, at large, in note (LXXXII.) at the end of this volume.

of Kent, it would naturally be inquired, what his conduct and proceedings were, relative thereto, now when he had arrived to be one of the sovereigns of the province? But, in this respect, our documents seem to disappoint us in the desired information. In a treaty with the Susquehannock Indians, which will be presently exhibited, it is expressly stated, that the isle of Kent and Palmer's island belonged to captain Clayborne; and no other recognition of his ownership thereof occurs to our search. It will be presently seen, however, that immediately succeeding to this last settlement of the government of Maryland, on the 28th of June, that the government or civil authority within the isle of Kent was subordinate and amenable to that of the province at St. Mary's, the provincial seat of government. Hence, it is to be inferred, that the only change on the present occasion experienced by the inhabitants of the isle of Kent, different from the rest of the province, was, that they were to pay their quit rents to captain Clayborne instead of lord Baltimore, and that he should for the future have the right of granting lands therein instead of his lordship, (though of this we have no evidence,) but that in all other respects, they were to be subject and amenable to the provincial government, as now settled and established under the commonwealth of England. As Mr. Bennett and Mr. Clayborne seem to have left the government of the province, after it had been thus organized, entirely under the management of governor Stone and the council, and Mr. Clayborne's name does not appear shortly again in any matters whatever relative to the government of the province, until the year 1654, we may suppose, that he returned soon after this last settlement of the government of Maryland to the duties of his office of secretary of state in Virginia. We find Mr. Bennett, however, immediately afterwards, and, as it would seem, before his return to Virginia, engaged in two important public transactions of the province, appointed thereto, with others of his Puritan brethren on the Severn, by governor Stone and the council, who had just entered on the duties of their offices.

“At a court held at Saint Mary's, the 28th day of June, *anno domini*, 1652, being the first sitting of the court after the alteration of the government, *the same day*—Present, William Stone, esqr., governor, Mr. Thomas Hatton, secretary, Robert Brooke, esqr., col. Francis Yardley, Mr. Job Chandler, Mr. Richard Preston.”

CHAPT. VI. From this caption of the record and the date thereof, it will
 1652. be seen that governor Stone and the council, just appointed, must have entered on the duties of their offices immediately after the preceding organization. It may be here remarked also, that in perusing the early part of the provincial records, it frequently occurs, that the political state transactions of the province are recorded as the proceedings of a court of justice instead of those of the executive branch of the government. This resulted from an imperfection in the government, in placing the duties of the *executive* and *judiciary* branches in the same body of men. The supreme provincial court of law and equity was composed, by virtue of all his lordship's commissions hitherto sent, of the governor and council for the time being, who frequently on one and the same day, without rising, acted in their *judicial* as well as *executive* capacities; and hence the erroneous blending of their powers, by the recording clerk, is easily accounted for. This will appear from the nature of the two transactions of the governor and council at this time, thus stated as done at the holding of a *court*.

A treaty
with the
Susque-
hannock
Indians.

“Whereas this court is informed, that the Susquehanna Indians have a long time desired and much pressed for the conclusion of a peace with the government and inhabitants of this province, which, as is now conceived, may tend very much to the safety and advantage of the inhabitants here, if advisedly effected: It is, therefore, ordered, and the court doth hereby give full power and authority unto Richard Bennett, esqr., Mr. Edward Lloyd, captain William Fuller, Mr. Thomas Marsh, and Mr. Leonard Strong, or any three or more of them, whereof the said Richard Bennett, esqr., to be one, at such time and place as they shall think convenient, to consult and treat with the said Susquehanna Indians, and by the use of all lawful and fitting means, (if they can,) to conclude a league and peace, on the behalf of this government and the inhabitants thereof, with the said Susquehanna Indians, so as the peace, safety, and advantage of the inhabitants here may be, (so far as in them lies,) thereby advanced, settled, and preserved.”

The above named gentlemen, except Richard Bennett, esqr., who must have been now considered as a resident of Virginia, being governor thereof, and here only in his capacity of commissioner, were all inhabitants of the new Puritan settlement on the Severn, recently called Ann Arundel, formerly and soon

again called Providence. They must have immediately, or within a day or two after the preceding authority was given to them, entered upon the execution of their diplomatic duties; for, on the fifth of July next following, a treaty was held, and articles agreed upon by them, with the Susquehanocks, "at the river of Severn in the province of Maryland;" to which place Mr. Bennett had most probably gone, not only for the special purpose to which he was delegated by the present provincial government, but also to pay his friendly visit to his Puritan brethren, whom he had planted there with so much care.

CHAPT.
VI.
1652.

The first article of this treaty, containing matter of great interest and curiosity even at this day, deserves particular animadversion :

"First, that the English nation shall have, hould, and enjoy, to them their heires and assigns for ever, all the land, lying from Patuxent river unto Palmer's island on the westerne side of the baye of Chesepiake, and from Choptank river to the northeast branch which lyes to the northward of Elke river on the easterne side of the said baye, with all the islands, rivers, creeks, —*— fish, fowle, deer, elke, and whatsoever else to the same belonging; excepting the isle of Kent and Palmer's island, which belong to captain Clayborne. But nevertheless, it shall be lawful for the aforesaid English or Indians to build a house or fort for trade or any such like use or occasion at any tyme upon Palmer's island."

The limits assigned, by this treaty of cession from the Susquehanocks, to the southern part of the *western* shore of the bay, being probably as far southward as they claimed, to wit, from *Patuxent* river, is some corroboration of what has been herein before stated; that the dominions, over which the emperor Powhatan of Virginia reigned, extended from James river to the Patuxent. It will be recollected, that when the Maryland colonists first settled in St. Mary's, in the year 1634, the Susquehanocks were said to be then waging a cruel war upon the Indians of that peninsula between the Patowmack and the Patuxent, particularly on the Yoamacoës. Powhatan, on account of the distance of this part of his territories from his seat of government was probably unable to protect them. The arrival and settlement of the Maryland colonists on that peninsula was highly agreeable to the Indians there, as it seemed to promise to

*There is a blank here in the record.

CHAPT. afford to them, as it actually did, considerable protection from
VI. the incursions of the Susquehanocks. But although the extent
1652. of this cession from south to north on the western coast or shore of the bay is ascertained with sufficient precision, yet its western limits towards the Allegany mountains seem to be quite indefinite, nor is there, probably, any evidence, to be obtained at this day, of the extent of the territories claimed or possessed by the Susquehanocks towards the more western parts of Maryland. The extent of the cession on the eastern shore, to wit, from the Choptank to the north east river in Cecil county, seems to imply, that the Susquehanocks had by this time subdued all the intermediate tribes on the eastern shore between the north east river and the Choptank, or that these tribes between the north east and Choptank, had incorporated themselves with the Susquehanocks. At the time of the first exploration of the Chesapeake by captain Smith, in the year 1608, the Susquehanocks and the Tockwocks, appear to have been in illiance with each other for the purpose of resisting the Massawomecks or Five Nations, who had come down the Susquehanah to attack them. How the Susquehanocks came to a right to cede the territory formerly owned by those intermediate tribes, is not easily to be ascertained. This right was most probably acquired either by conquest or incorporation; by the former most probably, if the conjecture be well founded, that the Indians settled on the south shore of the Choptank, called in the act of assembly of 1669, "the Choptank Indians," were a remnant of some one of these intermediate tribes, who had been driven there by the Susquehanocks, some time previous to this treaty of cession of 1652.

It will occur also, by an inspection of the maps of Maryland, that a small portion of territory, lying between the before mentioned north east river in Cecil county and the Susquehanah river, was by this treaty reserved by the Susquehanocks. For what purpose, except that of more conveniently carrying on their traffic in peltry brought down the Susquehanah by them, does not appear. The reservation, which they made in the treaty, of a right "to build a house or fort for trade" on Palmer's island, seems to strengthen this supposition; and from this reservation also it may be inferred, that few or no inhabitants had as yet ever permanently seated themselves on Palmer's island, whether it belonged to lord Baltimore or Mr. Clayborne; and that Sir

William Berkeley had never carried his intentions into execution of fixing settlements on that island for traffic as before mentioned. In regard to the isle of Kent, although the exception of that island in this treaty of cession is sufficient proof, that Mr. Clayborne claimed that island, and that although he does not appear to have been engaged in the treaty, and was perhaps in Virginia at the time, yet his friend Mr. Bennett had been sufficiently mindful of his interests.

CHAPT.
VI.
1652.

The remaining articles of the treaty seem to have been calculated principally for the future preservation of peace, and for the prevention of any rupture between the contracting parties; and it was provided, that in case of a rupture, "twenty days warning thereof, and delivering up of this writing," should be given beforehand.*

The other important transactions referred by the provincial court, "held at St. Mary's on the 28th of June," as before mentioned, to the same gentlemen before named, who had been appointed to negotiate the treaty with the Susquehannocks, related to certain complaints, which had been made by the inhabitants of the isle of Kent and others against captain Robert Vaughan, commander of the said island, "for divers misdemeanors and abuses in the execution of his office and otherwise." What these misdemeanors and abuses were, the order does not specify; but proceeds to state, that "no course having been hitherto taken in the due examination thereof, for the satisfaction of the said inhabitants, who have several times attended this court for that purpose to their great charge and trouble,† and the said captain Vaughan not now appearing according to expectation; It is therefore, by the governor of this province, with the advice of the council, for avoiding of further charges and trouble to the said inhabitants in attending this court again at so great a distance upon this occasion, thought fit and so ordered, "that the matter complained of be referred to the hearing, examination,

Com-
plaints
against
captain
Vaughan,
as com-
mander of
the isle of
Kent.

* See this treaty at large in note (LXXXIII.) at the end of this volume.

† From this it would appear, that these "misdemeanors and abuses" had been of long standing. Mr. Vaughan had been commander of the isle of Kent ever since his appointment by commission of the 18th of April, 1647, confirmed by another commission, by lord Baltimore himself, of the 12th of August, 1648. On a quarrel between him and governor Greene in November of the same year last mentioned, he had been removed by the latter, but in a month afterwards, on the 11th of December, was restored by governor Greene on his humble submission for his offence, as has been herein before stated.

CHAPT. VI. and determination of the persons before named,* or any three or
 1651. more of them, whereof the said Richard Bennett, esqr., to be one, who are hereby desired and authorized at such time and place, as they shall think fit for that purpose, to call the said captain Robert Vaughan before them, and if, upon the hearing and examination of the matter, they shall see cause for it, to remove him from his said place of commander of the said island, as also to appoint and constitute the said Mr. Thomas Marsh,† or some other fitting and able person, to the said place or office of commander of the said island, who is hereby in that case by the said governor, with the advice aforesaid, as fully authorized for that purpose as any other commander of any other county within this province, till further order to be taken herein.”‡

Whether Mr. Bennett and the other commissioners, hereby appointed, ever proceeded to any hearing or examination of these complaints against captain Vaughan, it does not appear. It seems from a subsequent document of the 18th of December next following, that captain Vaughan was then still commander of the isle of Kent; from which the most probable inference is, that no inquiry into his conduct by these commissioners ever took place.

Hostilities
of the east-
ern shore
Indians.

Although the preceding treaty of cession of the greater portion of the eastern shore of the province from the Susquehannocks might have been supposed to have guaranteed a peaceable and quiet possession thereof, especially to the white inhabitants of the isle of Kent, the only part of the eastern shore where any attempts at settlements as yet appear to have been made, yet the records of the province exhibit for this year most lamentable accounts of the murders, house-burnings, and robberies committed by the Indians upon the inhabitants of that island; and some of these injuries must have been done subsequent to the before mentioned treaty. There seems to be grounds, for conjecture, however, that these depredations upon the inhabitants of the isle of Kent were committed by the *Nanticoke* Indians, joined per-

* Meaning the commissioners “before named,” who had been appointed to treat with the Susquehannocks.

† A gentleman of the name of Thomas Marsh, who died about the middle of the eighteenth century, owned a large landed estate on the isle of Kent nearly opposite to the mouth of the Severn. He was probably a descendant of the above Mr. Thomas Marsh.

‡ These proceedings of the provincial court, of the 28th of June, 1652, were taken from the book entitled “Council Proceedings from 1636 to 1657,” p. 256.

haps with those of Wicomoco in Somerset. By the treaty just mentioned, the Susquehanocks limited their cession on the eastern shore southward by the Choptank; thus leaving the territories of the Nanticokes and the Wighcomocoos, in the present counties of Dorchester and Somerset, unaffected by their grant. But the Nanticokes were at this time full as powerful as the Susquehanocks, having sustained less diminution by fewer wars, and would not hold themselves bound by any treaty of peace or cession made by the latter. It is possible also, that the other Indians of the eastern shore, that is, those tribes dwelling within the limits of the territory ceded, to wit, from the northeast branch at the head of the bay to the Choptank, comprising the Tockwoks, Osinies, and perhaps those Indians subsequently denominated "the Choptank Indians," were discontented at this cession of their country, and had received unusual excitement therefrom. Be this as it may, the inhabitants of the isle of Kent deputed Mr. Philip Conner, Mr. Thomas Ringgold, Mr. Henry Morgan, and Mr. John Philips, to go to St. Mary's, with a petition to the governor and council,* setting forth, "that, whereas formerly there had been by the eastern shore Indians one murdered, and now of late one shot, another killed and stript near to his own house, all of them inhabitants of this island and *subjects of this province*, a dwelling house and much goods burned, as is conceived, by Indians, to say nothing of the continual trade of killing of hogs, they are so emboldened, these murders being past by, and being so well furnished with gun-powder and shot, that they come about our houses night and day, so that larums and disturbances are occasioned weekly, nay daily, so that some are so dreaded and affrighted, they have left their plantations, and many are resolved to desert the island."† "We are also informed, that the eastern shore Indians have great store of powder and shot, and many guns, not only in what they formerly bought, and have taken in captain Gugens his wreck, but they have not long since taken a Dutch sloop with guns, besides very much powder and shot, so that they are

* From this circumstance it is to be inferred, that the isle of Kent, notwithstanding Mr. Clayborne's claim thereto, still remained "subject" to the provincial government at St. Mary's.

† If there were but *twenty men* in the island in the year 1648, and the *fort* then pulled down, as has been before stated from a cotemporary writer of that year, (see before, p. 419,) it is probable, that they were not much stronger in the present year 1652; and consequently but illy able to resist the Indians.

CHAPT. very strong, bold, and insolent;*—the premises considered, the
 VI. petitioners humbly crave, that his worship and the council would
 1652. be pleased to seriously weigh and consider their deplorable condition, and take some speedy course for the suppressing of those heathens, and avenging of guiltless blood, and the preservation of their lives, with their wives and children.”

In consequence of this petition, as it would appear, governor Stone and the council convened and met, as the record expresses it, “at a court held at Saint Mary’s, 25th day of November, 1652.” After a statement of the substance of the petition, the record proceeds: “The governor and council, now present in court, together with Thomas Cornwaleys, esqr.,† and others, whose advice and assistance was desired in this case of great concernment, have ordered and appointed, that sufficient forces be speedily raised for a march against the eastern shore Indians, and for that purpose every seventh man throughout the province is to be *pressed* for this service; councillors, commissioners,‡ and other officers and persons of public employments within this province, and others usually freed in cases of this nature, excepted;§ and that the sheriff or other to be appointed in every

* If this Dutch vessel taken by the Indians, as above mentioned, was captured by them in the Delaware bay, as it possibly might be, the Dutch having at this time settlements on the Delaware, it would indicate, that all the Indians of the peninsula might have been engaged in an alliance to drive away all Europeans, where it was probably in their power to do it. As the Dutch, however, still carried on a trade with the two colonies on the Chesapeake, (Virginia and Maryland,) at least to the time of the “reducement” of those colonies in the spring of this year, it is more probable, that it was some Dutch vessel captured by them in the Chesapeake.

† The reader cannot but have much pleasure in greeting again our old colonial friend and acquaintance—the *captain*, as he was always called. It will be recollected, that captain Cornwaleys came to Maryland with the first settlers in 1643, as one of the *assistants* or councillors to governor Leonard Calvert, appointed thereto by lord Baltimore. For several years after the first settlement of the colony, he seems to have been relied upon as the governor’s Mentor in council and Achilles in combat. In the year 1643, he was called upon to command the little army to be raised to repel the incursions of the Susquehanocks, as before stated, (p. 257.) His name does not often hereafter occur. He seems to have lived retired on his estate in St. Mary’s county, called at this day Cornwaley’s Neck. We shall see him, however, again called forth by lord Baltimore himself, on a very important occasion in 1657, for his advice and assistance.

‡ Meaning justices of the peace.

§ On this subject of exemptions from militia duty, see before p. 242, and 252–3. As to *pressing* men, &c., there was an act, passed at the September session of 1642, entitled, “an act providing some things for the better safety of the colony,” which authorized the lieutenant general, “to press or take any vessels, *men*, provisions, arms, &c., at the most usual rate of the country, when necessary for defence,”—see before, p. 245.

county by the governor, or commander, or commissioners of such county for this employment, is, so near as he can, to press the ablest and fittest men amongst every seven for this service, together with such a convenient number of boats and other vessels for transportation, well fitted, as the governor shall conceive fitting and necessary to be used upon this expedition; and it is further ordered, that every the six persons throughout the province are to furnish out the seventh man, so pressed as aforesaid, with sufficient and fitting provisions of victuals from the time of his setting forth upon this expedition until the time of his meeting at the general rendezvous at Kent hereafter mentioned, and for twenty days after, with one gun well fixed, one pound and a half of powder, and six pounds of shot, and all other fitting and necessary provisions, arms, and ammunition for this service; from which charge no inhabitant of this province, councillor, or others, not pressed as aforesaid, is to be exempted; and it is further ordered, that all and every the forces so to be raised as aforesaid in Saint Mary's county, Charles county, and Patuxent river on the north side thereof,* shall meet together at Mattapanian upon the said Patuxent river,† near to the house late of Thomas Wair there, upon the twentieth day of December next, together with such boats, or other vessels as shall be pressed, or otherwise provided, for the transportation as aforesaid; where the governor is desired to appoint some able person or commander to take a view of them, as also how they are accommodated in every particular for the service, and under whose conduct and command they may with all convenient speed be transported unto the isle of Kent to the general rendezvous there upon the 30th day of the said month of December; and it is further ordered, that all the said persons and soldiers are hereby appointed to meet together at the said general rendezvous on the said island on the said thirtieth day of December, there to be disposed of and employed for this service under the conduct and command of captain William Fuller, of whom the governor,

CHAPT.
VI.
1652.

* This seems to furnish evidence, that the population of the province had extended itself at this time across the Patuxent northwards, perhaps into what is now called Calvert county. Charles county had been erected by an order of the governor and council for that purpose, on the 21st of November, 1650, and Mr. Brooke made commander thereof, in pursuance, as it would appear, of his previous agreement with lord Baltimore in England.—See before, p. 376.

† The convenience of shortening the voyage to the isle of Kent most probably pointed out this place as the most proper place of rendezvous for the forces of this part of the province.

CHAPT. with the advice of the council, hath made choice of for com-
 VI. mander in chief on this present expedition, &c.* And it is fur-
 1652. ther likewise ordered, that for all such Indian prisoners, that shall happen to be taken and brought in, when this march is ended, they shall be divided according to their value upon a general division throughout the province amongst every the six, that are at the charge of setting forth the seventh, herein before mentioned, unless the provincial court shall think fit to dispose of any of them otherwise;† and that as to other purchase or plunder either in corn or otherwise, from the said Indian enemy, during this intended march, it is to go upon a general division among the commanders and soldiers to be employed in the service, as the provincial court shall direct and think fit, special regard being to be had therein of those that shall best demean themselves in the service.”

In pursuance of this order, the governor, within a few days afterwards, issued a commission to captain William Fuller, bearing date the 29th of the same month and year, purporting to be “in the name of the keepers of the liberty of England, and according to the powers given unto him (William Stone,) by the right honourable the lord Baltimore, lord proprietary of this province, by his commission to him for the government thereof, and also according to the directions of the said order,” (of which order a copy is mentioned to have been inclosed to captain Fuller with his commission,) “constituting and appointing him the said captain William Fuller commander in chief under him” (the governor,) “of all the forces to be raised for a speedy march

* Captain Fuller’s name appears frequently hereafter, as a man of considerable note and influence with the Puritans of Ann Arundel; where also some forces were appointed to be raised for this intended expedition.

† If the meaning of this clause in the above order be—that of distributing the Indians expected to be captured during the expedition, among the inhabitants of the province, as *slaves*: such appearing to be the necessary construction of it; it seems to be somewhat explanatory of the before mentioned act of 1649, entitled, “an act touching Indians;” which made it felony, punishable with death, “to take, entice, surprise, transport, or sell any *friend* Indian.” It is to be inferred from this act of 1649, that it was then deemed lawful to transport or sell any *enemy* Indian, captured in what is called solemn war; upon the old principle now exploded, that having a right to put a captured enemy to death, you have a right to make a *slave* of him, as the more humane commutation. The above order must have proceeded upon this ancient principle, it being at that time strictly conformable to the law of nations; as appears from *Grotius*, (of the rights of war and peace, B. iii. ch. 7,) who wrote this celebrated work some short time prior to the year 1625, when it was first published at Paris, under the auspices of Lewis XIII. to whom the author dedicated it.

against the eastern shore Indians, giving him thereby full power and authority, (if he thought fitting,) to raise and levy such forces as are to be raised and levied in the county of Ann Arundel according to the said order:—and to meet, according to appointment, upon the isle of Kent, the 30th day of December next, or at any other convenient time or place for this purpose, to march against all or any Indians inhabiting upon the eastern side of the bay of Chesapeake to the northward of the southerly bound of this province on that side of the bay, being over against *Wicokomico* point, and from thence in a direct line eastward to the main ocean;* and to make war upon, and through God's assistance, by all possible means, to vanquish, destroy, plunder, kill, or take prisoners at your discretion, all or any the said Indians, either by sea or land, and *being so taken to put them to death by the law of war*,† or to save them at your pleasure, and for that purpose to pursue them, if occasion be, beyond the limits of this province;‡ and in all and every the premises you are to follow, as near as conveniently you can, the directions of the before mentioned order.”

CHAPT.
VI.
1652.

* If the “*Wicokomico* point,” above mentioned, refers to one of the points making the mouth of the *Wicomico* river in Somerset county, it could not have been “the southerly bound of the province,” as now settled. The point “from whence a direct line eastward to the main ocean,” according to the charter, must run to form the south boundary of the province, was *Watkyn's* point, so called in the charter as well as since, and which point as now determined, forms the mouth of *Pocomoke* river. The charter mentions “*Watkin's* point, near the river *Wighco*,” and from this repugnance arose the long cherished dispute as to where *Watkin's* point was. The above commission to captain Fuller demonstrates the uncertainty then prevalent even in Maryland, as to the true location of this point. Differences subsisted at this very time between Virginia and Maryland as to this boundary line between them, and which gave cause to lord Baltimore's directions in the last year, (1651,) to his governor to encourage settlers to take up lands near to those southern bounds of Maryland.

† This seems to have been a generally acknowledged *right of war* at the time of the above commission, as has been just stated from *Grotius*, in the passage before cited. Although civilized nations in Europe have renounced this right, yet, as the American Indians still continue to exercise this savage right, some doubt has been entertained by American statesmen of late, (particularly in the case of the Seminole war of 1818,) whether the law of retaliation does not still preserve this right to the United States to check the cruelties of these barbarians on their prisoners of war.

‡ This right of war,—to pass the frontiers of a neutral State in pursuit of an enemy,—is an acknowledged one at this day, under some limitations. Thus it was done by the commander of the army of the United States in 1818, in pursuit of the Seminole Indians, who had retreated into Florida, then possessed by Spain. The right must have been still stronger in the case of such pursuit from one British colony into another. The Virginians, perhaps, did not pretend to protect such retreating Indians from the pursuit of the colonists of Maryland.

CHAPT.
VI.

1652.

To those, who are acquainted with the climate of Maryland, it would readily occur, that the weather generally prevalent here in the months of December and January would have rendered such an expedition, as that now proposed, extremely hazardous as well as oppressive; whether it was to have been conducted by land through trackless forests, which the eastern shore of the province must have then presented, or by water down the bay in uncomfortable shallows, from the isle of Kent to the Wighcomoco or Pocomoke, where it was possible, if they penetrated far up those rivers, the boats might have been frozen up, so as to expose the forces to great hardship and danger. These considerations, as well as some others, particularly that the Indians of the western shore had gained intelligence of the intended expedition, appear to have operated upon the minds of the Puritans of Ann Arundel, so as to render the proposed expedition unpopular with them. It is probable, therefore, that no levy of men for that purpose took place in that county; accordingly we find that captain Fuller wrote from thence to governor Stone, on the thirteenth of December, in acknowledgment of the receipt of his commission, in which he says,—“Sir, I find the inhabitants of *these parts* wholly disaffected, not to the thing, but the time of the year; it being in all likelyhood, (as they conceive,) dangerous for their health; first, in regard to the want of necessaries, as also want of vessels fit to transport them; and next, that it is possible, they may be frozen into the rivers, and so expose themselves to more dangers through cold and want of necessary provisions than by the enemies; and one thing more, which doth most take with me, the Indians on the west side had notice of it before your commission came to my hands, as I am credibly informed; to prevent which, a longer time were to be desired, as also that some order might issue from yourself to prohibit the revealing of your design to any Indians under some penalty, as the law of arms hath in that case provided. As for the inhabitants of Kent, who were the material cause of this expedition, by exhibiting a petition to yourself for speedy relief, as is hinted in your order, I shall, (if weakness of body prevent not,) give them a visit, and advise with them, and readily assist them if occasion be offered, with men or otherwise. Sir, let me crave this favour, not to be mistaken in what I have writ. It is far from me to slight the power God hath set over me, but am willing to submit to it, and that really as for myself, I am

ready, both now and at any time, to do yourself and the country all possible service, but it is the present apprehension of the people, that, after the extremity of the winter be past, it will be far more fit for this service.”

CHAPT.
VI.
1652.

The consequence of this representation from captain Fuller was, that the expedition was relinquished, at least for a time, and no further proceedings, relative to it, appear on record, except a proclamation issued by governor Stone, bearing date the 18th of December, (1652,) stating the intelligence he had received from captain Fuller, and that “he had, therefore, upon serious consideration thereof, and of the soldiers’ great want of apparel and other necessities at this unseasonable time of the year, thought fit, and with the advice of the council did thereby discharge all the forces raised for the said intended march, from any further service therein, for the present, so as they may depart to their several habitations with their arms, ammunition and provision.”*

It has been thought proper to state the before mentioned intended expedition, though probably never accomplished, somewhat more in detail than may perhaps at first appear necessary, in order to exhibit the real situation of the province, in relation to the Indians seated within its territories, in a more natural and perspicuous point of view, than could have been done by a short narration of the facts comprised in these documents; especially as they contain sentiments and opinions of the colonists in those days concerning the relation then subsisting between them and the aborigines of the country, not to be found elsewhere; and evidence derived from authentic records is, in such cases, a surer ground for the historian to tread upon, than fanciful conjectures too often laid down by speculative writers upon this subject.

On the same day, on which governor Stone issued his discharge of the forces assembled, as before stated, his attention appears to have been directed to some late or previous conduct of the two commanders of the isle of Kent and Ann Arundel counties,—captain Robert Vaughan of the former and Mr. Edward Lloyd of the latter. As these two counties were so remote from the seat of government at St. Mary’s, where the office for land affairs was kept, as to make it inconvenient to the inhabitants of those counties to obtain warrants for taking up lands therein, it

Grants of
lands from
lord Balti-
more ne-
glected in
Ann Arun-
del and the
Isle of
Kent.

* The extracts above, relative to the above mentioned expedition against the eastern shore Indians, were taken from “Council Proceedings from 1636 to 1657,” p. 260 to 264, and from p. 276 to 277.

CHAPT. had been thought proper, "for the ease of those inhabitants," to
VI. authorise these two commanders just mentioned, by commissions
1652. for that purpose, bearing date the 29th of July, 1650, to grant warrants for taking up lands in their several and respective counties, according to his lordship's conditions of plantation then in force in relation to the whole province. In these commissions it had been provided, as the duties of these commanders, "to cause the said warrants," so to be granted by them, "together with the particular demands or assignments upon which the same shall be granted, to be entered upon record by his lordship's secretary of the said province." For this purpose it became the necessary duties of these commanders to *transmit*, at least, these warrants, together with transcripts of all such demands or titles to land, or assignments thereof, within their respective counties, to the secretary's office at St. Mary's. These duties these commanders had neglected to perform. In the absence of other reasons to be assigned for their misconduct in this respect, the general opinion, which certainly prevailed in the province at this time, that his lordship would shortly be deprived of all his rights and authority within the province, may be suggested as the exciting cause. Mr Lloyd, at the head of the Puritans of Ann Arundel, in conformity with their wishes, would very naturally adopt such ideas; and, if the before mentioned averment in the Susquehanock treaty was well founded,—that the isle of Kent was now considered as belonging to captain Clayborne, it would also very probably account for Mr. Vaughan's conduct in like manner. Hence too we may possibly deduce the motives of Mr. Robert Clark, his lordship's surveyor-general of the province, in not making the due returns to the same office of the certificates of survey executed under those warrants within those counties. We should at first suppose, that this neglect of the surveyor-general might more probably have been that of his respective deputies in those counties, if he had any there. But governor Stone, in his order on this subject, seems to censure the surveyor for this neglect, as a *personal* misdemeanor in himself, stating,—“that his the said surveyor's former irregular and unwarrantable proceedings herein having occasioned much trouble and inconvenience, to the great abuse both of his lordship's authority and the inhabitants.” To apply a remedy to these abuses, and to support, as it were, his lordship's tottering authority within the province, governor Stone issued an order or

CHAPT.
VI.
1652. ✓

proclamation, on the 18th of December, 1652, of which the said commanders and the surveyor-general were expressly required to take notice, and in which, after stating the before mentioned neglect of these commanders and the surveyor-general, "to the great prejudice," as he says, "not only of his lordship in his rents due upon such surveys, but also to the great wrong and abuse of the said secretary's office, and *likely in short time to produce much confusion and inconvenience*,"*—"he declared the said commissions, or any other for that purpose, so by him granted to the said captain Robert Vaughan and Mr. Edward Lloyd, as aforesaid, to be void and null, and that no warrant or warrants for land be thereupon granted by them or either of them after the last of this present month of December, further hereby willing and requiring, as well the said captain Vaughan and Mr. Lloyd, as also his lordship's surveyor-general, that they the said captain Vaughan and Mr. Lloyd do cause transcripts of all such demands or titles of land, assignments, and warrants within their several counties, as are not yet transmitted thither, there to be entered, and that the said surveyor-general make speedy return into the secretary's office of all such certificates of survey by him already made by virtue of any warrant whatsoever not yet returned, and that he presume not for the future to survey any land within this province for any adventurer or planter, to be granted upon his lordship's conditions of plantation without some warrant from myself for authority from me, or other special warrant or direction from his said lordship here published for his so doing."†

While the Maryland colony had been thus subject, during the preceding year, to an important political revolution, affected through the orders of the mother country, as well as to internal dissensions and discontents, religious, civil, and political, it might

1653.

A scarcity
of corn.

* This "confusion and inconvenience" was, in all probability, the cause of the suit in the provincial court of chancery, in the year 1738, entitled, "Lord Proprietary vs. Jennings and others," reported in 1 *Harris* and *McHenry's Reports*, 92. It is probable, that Mr. Lloyd, the commander of Ann Arundel county, by virtue of the commission to him, of the 29th of July, 1650, for that purpose, as above stated, granted the warrant of the 8th of July, 1651, to Thomas Todd, for a great part of the land on which the city of Annapolis now stands, and the survey might have been thereupon made, and the land laid out for him, but, through the neglect of the commander of the county and the surveyor-general, no transcript of the right or title to the warrant was ever sent to the land office at St. Mary's by the commander, nor any certificate of survey thereof returned by the surveyor-general.

† "Council Proceedings from 1636 to 1657," p. 277.

CHAPT. naturally be expected, that the agricultural affairs of the colony
VI. would be liable also to a dangerous neglect, and that consequent-

1653. ly there might occur a scarcity within the province of even the necessary sustenance of life. A proclamation of governor Stone, dated the 24th of January, 1652, (1653, N. S.) seems to indicate this state of the colony. The preamble explains the cause and purport of the instrument. "Forasmuch as I am given to understand, that there is like to be some scarcity of corn in the province this present year, and that divers persons have and do take the liberty to *buy corn of the Indians* inhabiting within this province, and to *transport the same* out of the province into other parts, to prevent the like for the future," he, the governor, "willed, required, and commanded all and every the inhabitants of this province, *foreigners*, and others, that they do not presume to transport any corn bought of any Indian within this province, without special license from him," (the governor,) "till Michaelmas next, or further order to the contrary."* This seems to afford proof of two facts, relative to the internal state of the province, at this period of time, which deserve attention; that, notwithstanding the fertility of a new soil, the agriculture of the cleared lands of the colonists was in such a wretched state, as to be insufficient for their subsistence; and moreover, that they were now indebted to the superfluity of the savages of the country for that necessary article of their sustenance. It is probable, that this state of things might in some measure be owing to an inconsiderate application of all their domestic industry to the cultivation of tobacco, a fault, even at this day, too prevalent with the planters and farmers of the western shore of Maryland, as well as Virginia. The free trade, which these two colonies had enjoyed with the Dutch prior to their late "reducement," principally in the sale and export of their tobacco, had probably also given uncommon encouragement to the growth of that commodity, and thereby occasioned less of their attention to the cultivation of maize or Indian corn, their principal bread stuff.

Origin of
the famous
navigation
act.

In this place it may be proper to observe, that the *trade* of these colonies—Virginia and Maryland, was about to undergo a considerable revolution, as well as their political government had done. In a few days after the council of state of England had given their *instructions*, before stated, for the "reducement" of these colonies, the parliament, with the same view of bringing

* "Council Proceedings from 1636 to 1657," p. 280.

about a rupture with the *Dutch* nation, proceeded to a measure, which has since called forth the eulogies of many modern writers. It was for the more effectual promotion of a principle, often before attempted by both James and Charles the first,—the monopoly of the colonial trade, for the entire benefit of the mother country. It has been before observed, that the leaders in parliament were desirous to commence a quarrel with the *Dutch*, probably for the purpose, as before stated, to diminish Cromwell's standing army, by calling the resources of the nation to naval expenditures. Different motives are said also to have excited the different partizans in parliament towards this measure. The encouragement of English shipping, in preference to those of the Dutch, especially in commerce, was so plausible a pretext for this, that Cromwell could not well oppose it. As the freight of the shipping of the Hollanders was at a lower rate than that of the English, the English merchants were in the habit of making use of *Dutch* ships even for importing American products from the English colonies into England. The English ships meanwhile lay rotting in their harbours; and the English mariners, for want of employment, went into the service of the Hollanders. The parliament, therefore, with unusual good sense, though not from patriotic motives, except to quarrel with the Dutch and ruin Cromwell, on the 9th of October, 1651, enacted that famous ordinance, commonly called the navigation act. The substance of which was:—"That no merchandize, either of Asia, Africa, or *America*, including also the *English plantations* there, should be imported into England in any but English built ships, and belonging either to English or English plantation subjects, navigated also by an English commander, and three-fourths of the sailors to be Englishmen."* Thus, by this act, which was made to commence on the first of December, 1651, the carrying trade of the Dutch from the British colonies to their mother country was entirely cut up; and the before mentioned ordinance of October 3, 1650, had before expressly prohibited all mercantile intercourse between the colonies and foreign states. It is apparent, that such measures could be calculated only for the benefit of the mother country. The *free trade* of the colonies with foreign nations, which, without doubt, would have been highly conducive to the growth and prosperity of such colonies,

* See this ordinance, stated somewhat more at large, in Holmes's Annals, vol. i. p. 354; who cites thereto Anderson, ii. 415, 416.

CHAPT. VI. was made, by an energetic republican parliament, to yield to the sole interest of the parent state. We shall see hereafter, that the rational principle of a reciprocity of advantages between the colonies and their mother country, induced other statesmen to adopt and continue this measure, until their unfortunate final separation. It is to the credit of this republican parliament, however, that they had so much sense of justice towards these colonies as to endeavour to render to them some equivalent advantages in return for this monopoly of their trade. In the year 1652, the same parliament passed an act "against planting *tobacco* in *England*;" thus giving a legislative force to all the repeated proclamations of James and Charles the first, for that purpose.* That these restrictions on the farmers of England were considered by them as public grievances, not merely on account of the illegal exertions of royal prerogative on this subject, but as an unnecessary abridgment of the natural rights of freemen, may be fairly inferred, as well from the actual attempts in the reign of James the first to grow tobacco in England, but from an assertion of Sir Edward Coke, when a member of parliament, in a debate on public grievances in the session of 1621. "Never till within these forty years," said he, "was there any restraint made, other than by act of parliament, that a subject, being a freeholder, shall not plant what he list in his own ground."† It remains yet to be demonstrated by events still in the womb of time, whether a continuance of a reciprocity of such favours, from parent to child, would not have been more production of the *happiness* of the latter, than that unnatural hostility now sworn to be ever maintained against the former.

Hostilities apprehended from the western shore Indians.

From provincial documents, still remaining on record, it appears, that considerable uneasiness and alarm were prevalent at this time among the colonists inhabiting the peninsula between the Patowmack and the Patuxent, on account of apprehensions of hostilities supposed to be meditated by the Indians, who resided on their immediate frontiers and within that peninsula. The governor and council, therefore, on the 23d of March, 1652, (1653, N. S.) "upon consideration of the danger from the Indians," as stated by them, "ordered, upon Mr. Brooke's offer of employing one of his sons in the service, that the said Mr.

* Robertson's Hist. of Amer. vol. iv. (B. IX.) p. 233.—Holmes's Annals, vol. i. p. 358.

† Chalmers's Annals, p. 49.

Brooke's son and John Shanks, or one of them, be employed as *intelligencers* amongst the Indians living upon Patuxent river, to discover concerning the Mathue Indians coming to trade amongst the Indians of Patuxent, and upon the said Mathue Indians' arrival there, with all speed, to give notice thereof to Mr. Brooke and Mr. Preston, who are, with all speed, to certify the governor thereof, that the forces to be appointed for the service, under the command of captain John Price, may thereupon march forth, to apprehend or destroy them, if it may be, and that it be left to the governor, who is desired to give direction for the appointing the forces for this employment. Also, a competent number to be of the trained band within St. Mary's, Charles counties, and Patuxent river, who may upon an alarm, as occasion shall require, be ready to meet at some place of rendezvous, under the command of captain Price, or what other commander the governor shall appoint, for the defence of the province." It appears, from captain *Smith's* first exploration of the Chesapeake, in the year 1608, that, on his entry into the Patuxent, he found three tribes of Indians situated thereon, to wit, the Acquintunachsuah, the *Patuxents*, (from whom the river without doubt took its name, or *vice versa*, they from the river,) and the Mattapanients, these last also either giving or taking their name to or from a creek emptying into the Patuxent. These tribes dwelt more together, and were more civilized and hospitable, than any other tribes, whom he had seen. We have seen before, on the first settlement of the Maryland colony at the town of St. Mary's, that these Indians came there to visit the colonists on their first landing, and that one of their chiefs then made uncommon professions of friendship to the English; which professions, it does not appear, that they ever contradicted by any subsequent conduct extraordinary hostile towards the colonists. Nor does the preceding order of the governor and council intimate any suspicion now entertained of their friendly disposition. But these Mathue Indians, whose place of residence we have no sufficient information to determine, but who were expected on a trading visit to the Patuxents, must have been some distant tribe, of whose enmity the colonists had some well founded grounds of suspicion. It does not appear, however, from our records, that these Mathue Indians, at this time at least, actually commenced any hostilities on the colonists, nor does there remain any report of the "intelligencers," or spies, who were appointed to recon-

CHAPT.
VI.
1653.

CHAPT. noitre them. About the same time, and on the next day, (24th
VI. of March,) in further precaution against these alarms, the gover-
1653. nor, it seems, thought it proper to pay some attention to the
Indians on the other side of the peninsula, and accordingly, by
a written order of that date, authorized Thomas Gerrard, esq.,
who resided in that direction from the seat of government, "to
use the best means he could, to discover the designs of the said
Indians, and for that purpose to raise what forces he should
think fit, with whom, or otherwise, as occasion should require,
he should repair to Porto-Back or Choptico, and (if he thought
fit) either disarm or secure the persons of any of the said In-
dians, till examination had touching the premises, or further
order."* Of these alarms we have no further information. But,
as connected with this subject, it may not be improper to men-
tion in this place, that some jealousy or suspicion of the Indians
on the Virginia side of the Patowmack had been, not long be-
fore, manifested by the people of Maryland. This had induced
the governor to issue a proclamation, dated August 9th, 1652,
stating, that "whereas the *Pocomoke* Indians, and *Matchoaticke*,
and divers other Indians on the south side of Patowmack river,
take to themselves the liberty of hunting here in Saint Mary's
and Charles counties, not only to the utter destroying of the
game, and disturbance of the hogs and cattle, if not destroying
them also, but by their insolencies not to be endured are like to
bring great troubles to the inhabitants of this province, if not
timely prevented; these are, therefore, in the name of the keep-
ers, &c., strictly to prohibit every inhabitant, &c., to give any
of the said Indians any entertainment, or to have any trade or
commerce with them, &c., excepting any Indian cow-keeping
youth."† That the *Pocomoke* Indians, alluded to in this procla-
mation, were not Indians who resided on the *Pocomoke* river on
the eastern shore, which in part forms the southern boundary
between Maryland and Virginia, may be inferred from the ex-
pression—"other Indians on the south side of Patowmack river."
The *Matchoatickes* clearly appear to be the tribe stated by
writers under the denomination of *Matchotics*, who resided in
King's county, Virginia,‡ and who, therefore, could with ease
cross the Patowmack into Charles or St. Mary's counties in

* "Council Proceedings from 1636 to 1657," p. 281.

† *Ibid.* p. 254-5.

‡ See Mr. Jefferson's Table of the Indian tribes, in his *Notes on Virginia*.

Maryland, and commit the above mentioned “insolencies” with a probable prospect of impunity. The *Pocomokes*, above alluded to, were, therefore, most probably some tribe of Indians in the northern neck of Virginia, and in the neighbourhood of the Matchoatickes, with whom they associated.

CHAPT.
VI.
1653.

Our sources of information, relative to the affairs of the province, seem now to fail us for a considerable portion of the present year, from March to November. Contrary to the common usage of the colonial trade to the Chesapeake, “no *English* shipping,” it seems, had arrived within the province of Maryland during the spring and summer of this year. Consequently, as governor Stone states, he had received no instructions or intelligence to direct him in the government of the province. When we look back at the state of England at this period of time, we are at once presented with the most probable causes to account for this dearth of intelligence. In the first place, the *Dutch* war had raged with the utmost fury in every part of the English channel, from its first commencement in May of the preceding year to the present time. This alone would occasion considerable, if not a total, interruption to the sailing of any tobacco ships from the port of London to the Chesapeake. But a more influential and important cause may perhaps be found in that extraordinary revolution in the government of England, which took place on the 20th of April in the present year, when Cromwell dissolved the parliament, by marching a file of musqueteers into the house, and driving the members out before him:—the most useful political lesson, that was ever yet opened to mankind on any page of history. The officers of the army, through Cromwell’s instigation, had presented a petition to the house, which, it seems, was not proceeded upon in the manner they wished or expected. They had expressed in it some disagreeable truths:—as, that this *long* parliament had sat *long* enough;—that it was time for the republican principle of a rotation in office to be attended to; and that the supposition of the house,—of the officers having acquired sufficient estates in the plunder of the late civil war, so as to enable them to do without any further compensation *for their revolutionary services*, was such as they would not put up with. They therefore authorised their general, (exactly as he wished,) to turn them out of doors; which he executed, without doubt, with a great deal of pleasure; though, as he said, “it was what he had earnestly with tears besought the Lord not to

Affairs of
England in
relation to
Maryland.

CHAPT. VI. impose upon him." Pretending that God, in his providence,
 1653. had thus thrown the whole right as well as power of government into his hands, he afterwards, on the eighth of June, by the advice of his council of officers, sent a written summons, under his own hand and seal, to about one hundred and forty persons of different towns and counties of England, Scotland, and Ireland, to meet at London on the fourth of July next ensuing. Upon these, when assembled on the day appointed, by his sole act and deed, he devolved the whole authority of the state. Among the fanatics of this convention, or *parliament*, as they denominated themselves, was one *Praise-God Barebones*, a leather seller in Fleet-street, London, who was an active member, and much noted for his long prayers, sermons, and harangues. From the ridiculous name of this prominent personage the assembly obtained, even at that time, the appellation of *Barebones'* parliament, and has been ever since so distinguished by historians.

During the existence of this parliament, however, notwithstanding the contemptible character which most historians have given it, a transaction relative to Maryland took place therein, which ought not to be passed unnoticed. It is stated by a contemporary writer, whom we have frequently before cited,* that "the pretended authority of the commissioners," (Bennett, Clayborne, and Curtis,) "for reducing of Maryland, was urged here in England by colonel *Matthews*, agent for the said Mr. Bennett and the colony of *Virginia*, when his" (Matthews's) "petition was debated before the committee of petitions of the late parliament, which began in July, 1653, and *was by that committee dismissed*." From this we collect, that Mr. Bennett had, prior to the meeting of this parliament in July of this year, he being then governor of Virginia, appointed colonel Samuel Matthews to be agent for that colony in England, as also, agreeably to the above expression, for himself on account of his conduct as one of the commissioners in the "reducement" of Maryland. It is to be inferred from these contests in England before the state authorities there, relative to Maryland, that lord Baltimore had appealed to those authorities against the conduct of the above mentioned commissioners, for their "reducement" of Maryland, without any special order for that purpose, as he contended. This measure, of referring the "reducement" of Maryland to

* *Langford's "Refutation of Babylon's Fall in Maryland,"* &c.

the final decision of the supreme power in England, was to have been expected from the terms, on which governor Stone re-assumed his office of governor, as before stated, to wit, that he, together with the others before named, might "reserve and save to themselves their oaths to the lord proprietary, *until the pleasure of the state of England be further known.*" It would seem also, that colonel Matthews, being now agent, not only for the colony of Virginia generally, but particularly in behalf of Messrs. Bennett and Clayborne, two of the before mentioned commissioners for the "reducement" of the colonies on the Chesapeake, had presented his petition on their behalf to the above mentioned committee, and that these two last mentioned commissioners were now residents in Virginia, the one as governor, the other as secretary thereof. Whether these contests before the state authorities in England, between lord Baltimore and the commissioners had commenced prior to the dissolution of the long parliament on the 20th of April last, there is no evidence; but if so, the business nevertheless appears to have been renewed before the committee of this parliament of 1653, and, as stated by Mr. Langford, "was by that committee dismissed." The *dismission* of a petition often implies a *rejection* of the prayer of that petition; and such was the construction of it in this case by lord Baltimore's friends, as Mr. Langford, in a sentence immediately subsequent to that last quoted, plainly intimates. The conduct of the commissioners in their "reducement" of Maryland would, therefore, appear from this to have been disapproved of by this committee at least, if not by the parliament of 1653. But it is proper to state here, that this allegation of the rejection of Mr. Matthews's petition by the committee of petitions, as above mentioned, was afterwards positively denied in a document entitled, "a paper relative to Maryland," which appears to have been drawn up, in the year 1656, by Mr. Bennett and Mr. Matthews conjointly, they being both then in England on business, as we may suppose, relative to both the colonies of Virginia and Maryland;* wherein they express themselves thus:—"Whereas it is said, that the committee for petitions, in the time of the little parliament,† rejected the petition of colonel Matthews concerning the

CHAPT.
VI.
1653.

* This "Paper" is at large in *Hazard's Collections*, vol. i. p. 623; but the reader will find it also at the end of this volume in a note to be subsequently referred to.

† This "little parliament" could have been no other than the "parliament which began in 1653," referred to by Mr. Langford as before stated. Lord Clarendon calls it the "small parliament."—See his *Hist.* (folo. edit.) p. 643.

CHAPT. VI. lord Baltimore, it is not so ; they were so far from slighting the same, that they looked upon it as too high for them, and therefore ordered the business to be transmitted back again to the council of state, as more proper for their consideration, as by their order may appear.”

1653.

It is possible, that Mr. Langford might have mistaken “the transmission of the business back again to the council of state” for a *dismission* of it altogether. But in truth, considering the ephemeral existence of these two tribunals, the little parliament and Cromwell’s council of state in 1653, there could have been little difference between such transmission and a final dismissal ; for, according to some historians, this little parliament becoming sensible and tired of their own contemptible existence, but more probably, according to others, through the crafty contrivance of Cromwell, surrendered up, on the twelfth of December in the same year, all their powers and authority back again to him, who had made them a parliament, having existed only about five months. With them must have been annihilated also the council of state, and a final period put to all such proceedings as were then before them ; and consequently to the business of the “reducement,” if it ever came before them.*

Notwithstanding these important transactions had thus taken place in the mother country, no intelligence thereof, or at least no orders in consequence thereof, appears to have been transmitted to or received in Maryland until the latter end of the present year. This circumstance may be clearly inferred from the rea-

* It is remarkable, that there is considerable contradiction in the English histories, as to the existence of *council of state* during the convention of 1653. *Rapin*, (Tindal’s edit. vol. 11. p. 71,) states, that when Cromwell dissolved the long parliament on the 20th of April, 1653, he “named a council of state, which governed the kingdom, with no other right than what was derived from the officers.” But lord *Clarendon*, (who was a cotemporary historian, and although then on the continent, yet had good information of all important passing events in England, being then the king’s chancellor of the exchequer,) expressly affirms, that when Cromwell issued his summons on the eighth of June to the different persons who were to constitute the parliament of 1653, he did it with the “advice of his council of officers, for he made yet no other council of state.”—*Hume* is totally silent as to any other council than the council of officers ; and Tindal, the continuator of *Rapin*, and who wrote subsequently to *Hume*’s *History of the Stuarts*, is also silent as to the appointment of any council of state, although he has added, by way of Appendix to *Rapin*, a very minute account of the convention of 1653, extracted from *Ludlow’s Memoirs*, and the *Parliamentary History*. It would seem, therefore, that there was then no other council of state than the council of officers ; who probably had more important matters to attend to than the “reducement” of the colonies.

sons assigned by governor Stone in a proclamation issued by him, on the seventh of November, 1653; the principal purpose of which was merely to adjourn or postpone the holding of a provincial court to the tenth of January following. His reasons for this measure are thus expressed.—“Forasmuch as no necessity appears of holding a *general court** so soon,” (as the time, to which it had been before adjourned,) “*no English shipping being yet arrived here*, and that, for divers reasons relating to the public welfare, it were requisite, (if please God it may so happen,) that we received some directions out of England touching the government here before a general court.”† It is probable, that the litigation between the lord Baltimore and the commissioners for the “reducement” of his province, had commenced prior to the late dissolution of the parliament on the twentieth of April, and that that event, as well as the fury of the Dutch war before mentioned, had occasioned the delay of the intelligence so anxiously expected by governor Stone. The petition of Mr. Matthews was now to be decided by the parliament which commenced in July, or by the council of state, which decision or dismissal, if it ever took place, was probably protracted to a period too late for the arrival of any intelligence thereof by November.

It does appear, however, that lord Baltimore in England had issued certain *instructions* to the governor of his province in the early part of the present year, bearing date the 17th of February, 1652, (1653, N. S.) No copy of these instructions now appears on the records, and the substance of them is to be collected only from references to them in subsequent documents. When they were received by governor Stone, is not to be exactly ascertained. From his expressions in the proclamation last stated, of November seventh, it would seem, that they had not arrived before the date of that instrument.

It is nevertheless certain, that governor Stone must have received these *instructions* in or before the early part of the succeeding year, 1654, N. S.; for, in consequence thereof, he proceeded, on the seventh of February, 1653, (1654, N. S.) to a very important measure, which became the ostensible and alleged cause of the civil war in the province, which shortly afterwards ensued. To carry these instructions into effect, he issued

Proceedings of governor Stone, relative to patents for lands, and issuing of writs. 1654.

* This is an uncommon instance of the use of this term in the records. The supreme court of the province was usually styled the *provincial court*.

† “Council Proceedings from 1636 to 1657,” p. 291.

CHAPT. a proclamation, of the date last mentioned ; in the commence-
 VI. ment of which he takes care specially and expressly to state his
 1654. authority for so doing. "According to the special direction and
 appointment of the right honorable Cecilius Lord Baltimore, &c.
 These are in his the said lord proprietary's name to give notice
 and declare to all and every the inhabitants of this province, and
 others, whom it doth or may concern, that whereas his said lord-
 ship understands, that divers persons inhabiting in this province
 have not sued out their patents in due time for the lands which
 they clayme to be due unto them here, *nor have taken the oath of*
fidelity, (as they ought to have done,) according to his lordship's
 conditions of plantation, whereby they clayme such land. Yet
 his lordship, out of his good affection to them, is not willing to
 take such advantage, as he justly might, thereupon against
 them, without giving them first fair warning, by this proclama-
 tion, of their error therein, but is contented, that all such per-
 sons, who clayme any land due unto them respectively by vir-
 tue of his lordship's *condicons* of plantation dated the second
 day of July, 1649,* shall, notwithstanding their said default,
 have the said lands granted unto them, as if no such default had
 been made. Provided always, that they doe respectively, with-
 in three months now next ensuing, *take the said oath of fidelity*
 according to his lordship's *declaration* bearing date the sixth of
 August, 1650,† and his instructions, bearing date the 17th of
 February, 1652,‡ and also, within the said time make their
 rights to the said lands appear to his lordship's secretary here,
 and sue out their patents, and pay to his lordship's receiver
 general here, or his sufficient deputy, all such arrears of rent as
 are due to his lordship for the said lands respectively from the
 time such patents ought, by the said *condicons* to have been sued
 out by them respectively, and also pay unto his lordship's offi-
 cers here such fees as of right belong unto them respectively for

* See these Conditions of Plantation, as mentioned before, p. 375.

† This "declaration," of 1650, does not now appear on record. But, according to a subsequent declaration of his lordship, dated the 26th of August, 1651, (which see at large in note LXXVIII. at the end of this volume, and before referred to,) that above mentioned, of the 6th of August, 1650, was to express *his agreement to the alteration of the oath of fidelity*, most probably thereby referring to such alteration of that oath as had been made at the then last preceding session of assembly, by the act of 1650, ch. 29, as herein before stated in p. 423.

‡ These instructions of 1652, (1653, N. S.) though not now upon record, as above stated, yet are evidently those upon which this proclamation above was issued.

the same. And these are further also, in the said lord proprietor's name, and by his special direction and appointment as aforesaid, to declare and give notice, that in case such person or persons, so clayming any land due unto them as aforesaid, *shall not take the said oath of fidelity*, or not sue out their respective patents, or not pay the said arrears and fees respectively as aforesaid within the time aforesaid, they shall be forever after debarred from any right or clayme to the said lands respectively, which (in that case) his lordship's lieutenant here is, by his said lordship's special direction, required to cause *to be entered and seized upon* to his lordship's use. Given at St. Marie's in the said province of Maryland, the seventh day of February, *Anno Dom.* 1653.—William Stone.”*

CHAPT.
VI.
1654.

As governor Stone appears to have acted herein entirely in conformity to the instructions of the lord proprietary, and as these instructions, if they were now extant, would not probably exhibit the inducements, operating upon his lordship's mind for embracing this interesting crisis of public affairs in England, in order to enforce the oath of fidelity, so repugnant to the inclinations of the *Puritans* in his colony, it remains for conjecture only, that this very crisis of the affairs of the mother country was most probably the operating cause of this measure, or at least for the choice of this critical period of time. It will be recollected, that the date of these instructions was about two months prior to the dissolution of the long parliament. The Presbyterians, who formed the only powerful party in opposition to the Independents, still existed in considerable force. The former were not averse to royalty, provided they could prevent the renovation of episcopacy. With these, therefore, the third or minor party, termed royalists, or old church, more naturally coalesced; hoping, without doubt, that with the restoration of monarchy, episcopacy would probably follow. But, the Independents were mostly thorough going *republicans*; and with these a small party, if they may be so called, of philosophical politicians, usually termed *Deists*, joined in their reprobation of monarchy.† It was, most probably, owing to these Deists, usually men of acute discernment, disposed to adopt the philoso-

* “Council Proceedings from 1636 to 1657,” p. 293.—It is published at large also in Kilty's Landholder's Asst. p. 54.

† Of these, *Harrington*, the celebrated author of the *republican* treatise entitled *Oceana*, Harry Martin, and several others are mentioned by *Hume*, as heads or principal persons.

CHAPT: phical doctrine of the natural equality of mankind, and there-
 VI. fore generally the most sincere republicans in their principles,
 1654. that the *republican* party in England at this time, began to entertain some jealousy of Cromwell's secret designs. Seeing at once through this affected fanaticism, these philosophical politicians gave the alarm to the republican Independents. To crush at once this embryo opposition to him, Cromwell resolved to give it a death blow by a dissolution of the parliament. This view of the political affairs of England at this period of time seems to develop the only probable motives now to be imputed to lord Baltimore in issuing his instructions, of the 17th of February, 1652-3, to his government in Maryland, for strictly enforcing the submission of all the inhabitants thereof to his proprietary rights. During the contests of these conflicting parties at home, he might naturally have hoped, that the Puritans of his colony would not have been able to raise any effectual opposition to this measure. It is possible also, that the state, (or government of England,) had, prior to the dissolution of the long parliament, given either some decision in favour of his lordship or some intimation to him that such would be the event: a supposition, which seems to receive some confirmation from the condition reserved by governor Stone on his reassuming his office, on the 28th of June, 1652, as before stated, to wit, "until the pleasure of the state of England be known." The dissolution of the parliament and the consequent accession of Oliver to the supreme power seem, however, to have given a turn to the politics of the nation, of which his lordship was not perhaps aware.

It would seem also, that governor Stone had received express authority from his lordship, possibly in the same instructions of the 17th of February, 1652-3, not only to require the oath of fidelity from such inhabitants as would obtain grants of land, as just stated, but, contrary to the governor's last agreement with the commissioners for the "reducement," to cause all writs, for the future, to be issued out in his lordship's name as formerly. In pursuance of these instructions, governor Stone, in a few weeks after the preceding proclamation for enforcing the oath of fidelity, issued another, requiring all officers of justice within the province, and giving therein particular notice thereof to the commissioners for the isle of Kent county,* to issue out all

* Justices of the peace, before whom county courts were then held, were, in common parlance, called "commissioners."

writs in every county within the province in his lordship's name. His reasons for the measure are therein stated as follows:

CHAPT.
VI.

1654.

“By the lieutenant, &c., of Maryland.—Whereas the right honourable the lord Baltimore, lord proprietary of this province of Maryland hath given express charge and command to myself and his other officers of justice to issue out writs within this province in his lordship's name as formerly, being a proviso granted to him by his patents, whereby sovereign dominion, faith and allegiance, is reserved to the commonwealth of England, and in that respect the making out of writs here, according to his lordship's direction as aforesaid, cannot any ways derogate from our obedience to that commonwealth in chief under God, nor our *engagement* taken thereto, which we must and ought to be very careful not to infringe.* These are, therefore, to give notice to the commissioners for the isle of Kent county, and to all other officers of justice within this province, whom it may concern, that they are required by his said lordship to issue out all writs in every several county within this province according to his lordship's said direction, who will expect a due compliance with his commands therein, as they will answer the contrary. And further, these are, in his lordship's name, to will and require the said commissioners for the said isle of Kent county, that they be careful, as far as in them lies, by raising of convenient forces for that purpose within the said county, to prevent any mischief from the Indians, of whom, as I understand, there is at present great occasion of suspicion.—Given at St. Mary's this 2d day of March, *anno domini* 1653.

WILLIAM STONE.”†

From these two proclamations it appears, that governor Stone had now, in pursuance of his lordship's special instructions, resolved to relinquish his submission to the commissioners for the “reducement” of Maryland, and for the future to cause all writs to be issued in his lordship's name, as a test of his lordship still being “the true and absolute lord and proprietary of the province, saving always the faith and allegiance and sovereign dominion due to”—the commonwealth of England, instead of “to the king and his heirs,” as expressed in the charter. Nor did this arrangement infringe upon the test called—the *engagement*,

* See the form of this engagement, ante, p. 440.

† “Council Proceedings from 1636 to 1657,” p. 297.

CHAPT. which was only, "that the subscriber should be true and faithful
 VI. to the commonwealth of England, as it is now established, with-
 1654. out king or house of lords." To this resolution of the govern-
 or some of the councillors, at least one of them, appointed by
 the commissioners for the "reducement," seem to have acceded,
 as appears from the following:—"Memorandum, that upon the
 11th day of February, 1653, Mr. Job Chandler took the oath
 of a councillor to the lord proprietary, which was administered
 unto him by me his lordship's secretary,—Thomas Hatton."*
 It is probable, that the *oath of a councillor*, prescribed by his
 lordship, and annexed to his last commission of the council, dat-
 ed August 12th, 1648, had been considered as annulled and
 abrogated by the "reducement," and reappointment thereon of
 the governor and council, on the 28th of June, 1652. But, as
 his lordship and his governor had now resolved, that things
 should be reinstated as they were prior to the reducement, it be-
 came necessary that the councillors should qualify themselves
 again under their former oath. This oath unluckily contained
 a clause, wherein he, who took it, swore, that he would not di-
 rectly or indirectly molest or discountenance any person in the
 province professing to believe in Jesus Christ, and in particular
no Roman Catholic, for or in respect of his religion.† This, in
 the language of the Puritans, "was in plain words to counte-
 nance and uphold anti-Christ;"‡ and hence, as from fresh fuel,
 blazed forth the civil war and bloodshed in the province, which
 shortly ensued.

Although Mr. Chandler appears to have remained faithful as
 a councillor to lord Baltimore, yet there is record-evidence of
 the disaffection of one other of the council, (colonel Francis
 Yardley,) who had been appointed by the commissioners for the
 "reducement." He was charged with "contemptuous carriage
 and demeanor towards the government here under the lord prop-
 rietary." It is probable, that he was averse to the proposed
 change and return to a proprietary government. He was, more-
 over, further accused with "very probable suspicion of an in-
 tention in him, in some private manner, to remove his estate
 out of the province, and to leave his debts and engagements here
unsatisfied." The record, here referred to, appears in the na-
 ture of a writ issued out of the provincial court, "by the lieu-

* "Council Proceedings from 1636 to 1657," p. 296.

† See the oath in note (LXIII.) at the end of this volume.

‡ Caleb Strong's pamphlet, entitled, "Baylon's Fall in Maryland," &c.

tenant," &c., that is, the governor, directed to three persons therein named, requiring them, in case the said colonel Yardley shall endeavour or attempt to remove his said estate, or any part thereof, out of this province, before he be first licensed thereto by the government here in an orderly way, that they use their best endeavours to hinder or prevent him from so doing, by making stoppage thereof, and securing of in their possessions, till upon notice thereof to be given to the lieutenant or the *provincial court* here, they receive further order or direction herein."—Dated, 20th day of March, 1653.* Whatever connection might have existed between this proceeding and colonel Yardley's disaffection to lord Baltimore, yet, if the fact was established by testimony, as it appears from the record of this case to have been, by a deposition "taken in open court," that he was about to eloin his property out of the province and beyond the reach of his creditors, the common law authorized the writ of *ne exeat provinciam* in such case; but this writ more properly perhaps appertains to a court of chancery, and as governor Stone was, by his commission, *chancellor* of the province, as well as chief justice of the provincial court, it is possible, that it might have been ordered by him in the former capacity†.

CHAPT.
VI.
1654.

During the short existence of the power, now assumed by governor Stone, of acting solely in the name of lord Baltimore, and not in the name of the keepers of the liberty of the commonwealth of England, as had been appointed by Bennett and Clayborne, in 1652, several acts and proceedings of the provincial government took place, prior to its *second* "reducement" in July of this year, which it would be improper to pass over unnoticed. They will be briefly mentioned here in their natural order of time.

In the early part of the present year, governor Stone granted a written license, bearing date, March 18th, 1653-4, to a certain Thomas Adams, "with his vessel to trade or traffic with those of the Swedish nation in Delaware bay, or in any part of this province, not being enemies to the commonwealth of England; as also, with any Indians on the eastern shore of the bay of Chesapeake within this province, not in open hostility with the inhabitants here."‡ So far as this license related to a traffic

The early contests about the lands on the Delaware.

* "Council Proceedings from 1636, to 1657," p. 297.

† See this subject discussed more at large in note (D.) in the introduction to this history already published.

‡ "Council Proceedings from 1636 to 1657," p. 293.

CHAPT. VI.
 1654. with any Indians of this province, it must have been founded on the act of assembly of 1650, before stated, entitled, "an act concerning trade with the Indians," which was thereby prohibited without such license;* but why such license was necessary for the purpose of trading with the Swedes settled on the Delaware, especially as no war then subsisted between the English commonwealth and the Swedish nation, as then did between the former and the Dutch, who had also settlements on the Delaware, does not clearly appear; unless a general power to regulate all trade, carried on by the inhabitants of the province with any neighbouring colony, should have been deemed to appertain to the prerogative powers of the lord proprietary. It is possible, that the restriction in this license,—“not being enemies to the commonwealth of England,”—might have been purposely inserted to guard against any trade or communication with any *Swedes*, who might then have been in subjection to or within any *Dutch* settlements on the Delaware; for, at this time, there seems to have been no definite limits or boundaries to those little spots of territory on that bay and river, of which these two nations were now, or had been for some years, alternately possessing and dispossessing each other. This leads us to recognize some of the events, which occurred between these two nations in their contests with each other for a territory then rightfully and truly a part of the province of Maryland. It will be recollected, that we have before deduced the disputes between the Dutch and Swedes, as well as the claims of our northern friends—the New Haven settlers, in relation to their respective settlements on the Delaware, as low down as to the end of the year 1643.† The Swedes had, within a few years after their first arrival in the Delaware, which was in the year 1627, built several forts, around each of which probably several settlements had been formed, as at a place called by them *Elsingburg*, situated near Salem in New Jersey on the east side of the river, and at that now called Chester in Pennsylvania; but their principal forts, which they erected in the year 1631, were—one on an island in the Delaware, which they called *Tenecum*, situated about sixteen miles above New Castle, where governor Printz erected his palace or government house, and another at the confluence of the Brandywine and Christina creeks, where a town was laid out by them and a settlement attempted. Of these

*See before, p. 397.

† Ante, p. 205, and 261.

small portions of territory they appear to have remained in quiet possession for some years; but in 1645 one of these forts, most probably that between the Brandywine and Christina, was burnt with all its buildings, and all their powder and goods therein were blown up.*

CHAPT.
VI.
1654.

The Dutch also still persevered in their endeavours to establish settlements on the Delaware; and in the year 1650 they first erected a trading house or fortification on that low point of land, where or near which the present little town called New-Castle in the state of Delaware now stands, called by the Dutch Niewar Amstel.† Against this measure, it seems, Printz, the governor of the Swedes on the Delaware, made a formal protest; but the Dutch proceeded on their design, and their governor, of the name of Hudde, who was appointed to rule over this trading settlement, soon after made a purchase from a nation of Indians, called the Minquaas, of a considerable tract of country to the north and south of the present town of New-Castle. The deed was dated, July 19th, 1651, and the territory ceded was described therein, as follows:—"beginning at the west side of the Minquaa or Christina kiln, (in the Indian language, named Suspecough,) to the mouth of the bay, or river, called Bompt-hook, in the Indian language—Canaressa; and so far inland as the bounds and limits of the Minquaa's land, with all the streams, &c., appurtenances and dependencies." In stating this settlement and purchase by the Dutch, it has been very justly remarked by a learned annalist,‡ that, "from this transaction alone we may infer, that no colony had hitherto been settled," that is, by the Dutch on the Delaware, "and that the possession of all parties," (the Dutch, Swedes, and English,) "was recent and unsubstantial." This corresponds with what has been remarked by ano-

* Holmes's Annals, *sub anno* 1645; who cites Hubbard's MS.

† Although Smith, in his Hist. of New York, has expressly stated, that the Dutch built their fort at Niewar Amstel in the year 1651, from whom Chalmers and other writers have copied it, yet as the Dutch ambassadors or messengers, (Augustine Heerman and Resolved Waldron,) in their manifesto delivered to the government of Maryland, dated October 6th, 1659, expressly state, "that the towne and forte—New Amstell was erected in the year 1650, the governor general and councill having thought good to remove the forte Nassaw, which had been built in the year 1623, about fifteen leagues up the river on the eastern shore," (said to be near Gloucester in New Jersey,) their allegation is here followed, as being more authentic than that of the historian of New York. See the record book in the council chamber of Maryland, entitled, "Council, H H. 1656 to 1668," p. 43.

‡ Chalmers's Annals, p. 632.

CHAPT. VI. ther writer—that the early Dutch settlers on the Delaware “made
 1654. little or no improvement, *applying themselves wholly to traffique in skins and furs*, till near the time of the wars between England and them;” that is, to about the present period of time, of which we are now treating. The same writer adds:—“after them came the *Swedes* and *Fins*, who applied themselves to *husbandry*, and were the first *christian* people that made any considerable improvement there.”* It is possible, that the reason, why this deed of purchase bounded its northern limits by the Christina creek, was, that the Swedes were then in possession of the peninsula between the Christina and the Brandywine. But the *inland* extent of this Indian purchase was evidently indefinite and uncertain. On the opposite side of the peninsula—the eastern shore of the Chesapeake, there were other tribes of Indians in the occupation of territories, perhaps equally extensive into the interior, so as to reduce those of the Minquaas to a very narrow slip on the Delaware. The right of the Minquaas to sell these lands seems also rather exceptionable; being most probably founded only on the right of conquest, and not of possession. It is stated, by a well informed writer,† that “all that part of Pennsylvania, which is watered, below the range of the Kittatinny mountains, by the rivers or streams falling into the Delaware, and *the county of New Castle in the State of Delaware*, as Duck creek,” was originally occupied by a nation or tribe of Indians called by themselves Lenopi, by the French *Loups*, and by the English *Delawares*.‡ This nation, (the Delawares,) was divided into five tribes, one of which, called the Chihohocki, dwelt on the west side of the river now called the Delaware, but by them called the Chihohocki. It appears from this, that the

* See a small History of Pennsylvania and West New Jersey, (p. 3,) by Gabriel Thomas, who, as he himself has stated in this book, was one of the first adventurers among the Quakers to settle Pennsylvania, in the ship called the John and Sarah, in the year 1681, and resided there about fifteen yaars. Much the same is stated by William Penn, in one of his letters from Pennsylvania, dated August 16th, 1683. See Proud’s Hist. of Pennsylvania, vol. i. p. 260.

† Mr. Charles Thompson, in his Notes on Jefferson’s Notes.—See the appendix to the latter, note 5.

‡ It would appear from “*Heckewelder’s Indian History*,” lately published in vol. i. of Transactions of the Amer. Philos. Society at Philadelphia, that the *Delaware* Indians, occupying Pennsylvania and a part of the Delaware State, prior to the settlement thereof by Europeans, were only a tribe of a great nation called the Lenopi, (or *Lenni Lenape*, as he writes it,) who came from beyond the Mississippi, and peopled all the Atlantic coast from the Hudson to the Potowmack.

country, ceded by the aforesaid deed from the Minquaas to the Dutch, had, prior to this deed, belonged to the aforesaid tribe called Chihohocki—a tribe of the Delawares. The right of the Minquaas to make sale of this territory may perhaps be accounted for, by supposing, that these Minquaas were in reality one and the same nation of Indians as that called the Mingoos, by the French called Iroquois, by the English the *Five Nations*, but by the southern Indians, at the time of Smith's exploration of the Chesapeake in 1608, the Massawomecks. The similarity of sound seems to justify the supposition, that these *Minquaas*, and the nation called Maquaas, were one and the same, and it is certain, that the Indians called by the Dutch, *Maquaas*, were the Mingoos or Five Nations.* If the Minquaas had any right to make the aforesaid deed to the Dutch, it must have been the right of *conquest*; for, it is stated by one of the writers before cited,† that the Lenopi or Delawares, including the Chihohocki, as we may suppose, had been conquered by the Mingoos, prior to the arrival of William Penn's colony, which was in the year 1682.‡ It is probable, that this conquest might have taken place prior to this deed from the Minquaas to the Dutch, dated in the year 1651; for, we understand, as before stated, that the Massawomecks or Mingoos, or Minquaas, or Mengwes, (importing the same nation,) were extending their conquests southward as early as *Smith's* exploration of the Chesapeake in 1608. Thus, the right of conquest might render the deed valid, so far as a purchase from the

* See the account of the *Maquaas* Indians, by John Megalopensis, jr., in *Hazard's Collections*, vol. i. p. 517;—*Smith's Hist. of N. York*, p. 47;—and *Proud's Hist. of Pennsylvania*, vol. 2. p. 296. It is probable, that both the appellations—Mingoos and Maquaas were corruptions of that of *Mengwe*, given by *Heckewelder*, before cited, as the original name of the Iroquois, or Five Nations; who, as he says, came from the west, beyond the Mississippi, about the same time that the *Lenape* did.

† Mr. Charles Thompson, *ibid.*

‡ But this conquest, according to *Heckewelder*, (before cited,) was not by force, but by treachery; the Mengwe persuaded the Lenape or Delawares to assume the pacific character of women. But this supposition seems to savour too much of the passive-obedient and non-resisting principles of the United Brethren. It is more probable, that, agreeable to the warlike character of the Massawomecks or Iroquois, they conquered the Lenape and their several tribes by force. The account, which Smith has given of them, when he first explored the Chesapeake, corresponds with this. They were thorns in the sides of the Manahoacs and Powhatans of Virginia, and had, before that time, driven the Susquehanocks out of Pennsylvania into Maryland. According to *Colden*, in his history of them, they overran a great part of North America, carrying their arms as far south as Carolina, to the northward of New England, and as far west as the Mississippi.

CHAPT. VI.
1654. Indians could vest any right in the Dutch, unless a previous purchase by the English could be shewn; which was alleged by the New Haven traders to be the case. But, the question is,—had the Dutch any *right* to make any purchase at all from the Indians in a part of the country previously acquired by the English by the *right of discovery*? which question acquired peculiar force, when this right of purchase from the Indians by the Dutch was set up by William Penn's heirs (Englishmen) in 1735, as one ground of their claim to the three lower counties.

The governor of the Swedes, (Printz,) observing this conduct of their rivals, in endeavouring to make permanent settlements in the territory, which, as they conceived, belonged to them, formally protested against the erection of the Dutch fort or trading house at New Castle. The erection of this fortification at New Castle, together with this purchase of the Dutch from the Indians, gave considerable umbrage also to the New Haven claimants or traders on the Delaware; who, accordingly, in September, 1651, presented their petition to the commissioners of the United Colonies of New England, then assembled at New Haven, in which they remonstrated against this “new fortification and plantation *upon their duly purchased lands*, lately begun by the Dutch.” They had before made their complaints to the commissioners in 1643, of “sundry injuries and outrages they had received from both the Dutch and Swedes at Delaware bay;”^{*} but the commissioners, assembled in 1649, as it appears, did not seem much disposed to support with any effectual assistance these projected settlements of the New Haven traders on the Delaware; assigning therefor very substantial reasons, as they now appear to us. “The commissioners, considering the present state of the colonies, the English in most plantations already wanting hands to carry on their necessaryocations, thought fitt not to send forth men to possesse and plant Delaware, nor by any publick acte or consent to incurrage or alow the planting thereof: The New Haven marchants being notwithstanding lefte to their just libbertie to dispose, improve, or plant *the land they have purchased* in those parts, or any parte thereof, as they shall see cause.”[†] At the next meeting of the commissioners, however, in September, 1650, at Hartford in Connecticut, the New Haven traders to Delaware, renewed their complaints, and

^{*} See before, p. 206 and 261;—also Hazard's Collections, vol. ii. p. 11.

[†] Hazard's Collections, vol. ii. p. 127.

Stuyvesant, the Dutch governor, having arrived there also to meet the commissioners, in order to settle the bounds and limits between Connecticut and New Netherlands, articles of agreement were then made and concluded by the delegates respectively appointed by the commissioners and the Dutch governor; in which the delegates, after stating the pretensions of each party to the lands on the Delaware, particularly, that "the English of New Haven had presented and shewed to them several purchases they had made on both sides the river and bay of Delaware of several large tracts of land, unto and somewhat above the Dutch house or fortte there,* with the consideration given to the said sachems and their companies for the same, acknowledged and sealed by the hands of the Indians, who, they affirm, were the true proprietors,"—determine, that "wanting sufficient light to issue and determine any thinge in the premises, are necessitated to leave both parties *in statu quo prius*, to plead and improve their just enterests at Delaware for planting or trading as they shall see cause; onely wee desire, that all proceedings there, as in other places, may be carried on in love and peace tell the right may bee further considered and justly issued either in Europe or heere by the two States of England and Holland."

On this clause of the agreement a remark occurs, in application to the subsequent purchase of the Dutch from the Minquaas in 1651, as before stated. If the English of New Haven had made "the several purchases from the Indians of the several tracts of land on both sides of the river and bay of Delaware," which seems to be admitted by the Dutch delegates in their agreement, one of which purchases included the spot or scite of New Castle, where the Dutch erected a fort in 1651, as the English of New Haven subsequently alleged, it certainly goes far to invalidate the Dutch purchase of 1651 from the Minquaas, relied on by William Penn and his heirs in support of the Dutch right under which they claimed; the prior purchase from the Indians taking precedence of the latter.† But the truth is, that neither

* This Dutch house or fort must have been either at Nassau, near Gloucester, or at the Hoarkilns, now Lewistown; as they had not possession of New Castle until the next year, 1651.

† Penn, in his letter of the 14th of August 1683, (see Chalmers's Annals, p. 663,) has stated, that lord Baltimore could "pretend nothing to Delaware, that was at and before the passage of that patent," (to wit, lord Baltimore's charter for Maryland, of 1632,) "*bought and planted by the Dutch.*" But, if this purchase of 1651, was the *first* purchase from the Indians of their lands on the Delaware by the Dutch, as it appears to have been; (so stated by Chalmers in his Annals,

CHAPT. of them had any right to make a purchase from the Indians c
 VI. lands, which had before been granted by the English nation c
 1654. their sovereign, to lord Baltimore; to whom alone appertained
the right of extinguishing the Indian title to all lands within the
 limits of his province. The Dutch were intruders within the
 limits of that part of the American continent acquired by the
 English in virtue of Cabot's discovery, and the New Haven
 traders ought not to have presumed to counteract the grant of
 their own government in England.

The New Haven traders, however, pleased with that article
 of the agreement of 1650, between the commissioners and the
 Dutch, relative to Delaware, and flattering themselves, that, not
 withstanding the commissioners had before refused to support
 them in their projected settlements there, yet that the Dutch
 were now bound not to molest them therein, began preparations
 in the course of the winter of 1650-1, to make a plantation or
 settlement on the Delaware. Having engaged about fifty set-
 tlers, and hired a vessel for their transportation, the adventur-
 ers set out from New Haven in March 1650-1, intending to call
 at Manhattoes in their way, having a letter from the governor of
 New Haven to the Dutch governor "to prevent jealousies, and
 to assure him of the Englishe's peaceable and righteous inten-
 tions and proceedings." But Stuyvesant was too alert, not to
 be previously apprised of their proceedings. Being informed of
 the intended expedition, he dispatched a messenger to the New
 Haven governor with a formal protest against it, dated April
 11th, 1651, expressing therein his intention of using against
 those attempting the expedition "force of arms and mortal op-
 position to blood shed." The adventurers had sailed from New
 Haven before the arrival there of the messenger with the pro-
 test, but had not arrived at Manhattoes previous to his depart-
 ure therefrom. They were, therefore, unacquainted with the
 Dutch governor's resolution, when they arrived at Manhattoes.
 On their arrival there they sent two messengers on shore to de-
 liver the letter of the New Haven governor to the Dutch go-
 vernor. After perusing the letter he immediately ordered the
 two messengers to be arrested and to be kept as close prisoners

p. 632;) how futile was this argument of Penn. Indeed, he himself seems to
 have doubted its validity, in resorting, in the next sentence, to lord Baltimore's
 neglect "during forty years in not *reducing* it; by which neglect," (he adds,)
 "he *forfeited* it." A *pacifical* principle truly! A man looses his right by not re-
 sorting to force, (that is, war,) to maintain it!

under guard.* That done, he sent for the master of the vessel to come on shore, as he wished to speak with him, and committed him also. After which two more of the company coming on shore, and desiring to speak with their friends under restraint, he committed them also. He then desired to see their commissions, promising to return them next day; they were delivered to him, but when afterwards demanded, he refused to return them; nor would he either re-deliver the commissions or discharge the men from imprisonment, until they engaged under their hands not to proceed on their voyage towards Delaware, but to return to New Haven; at the same time threatening them, that if he should afterwards find any of them in Delaware, he would seize their goods, and send their persons prisoners into Holland. So accordingly they returned to New Haven, preferred their petition to the commissioners of the united colonies assembled at New Haven in September of the same year; wherein they stated their before mentioned grievances, and moreover, that the Dutch had then, “(as was reported) lately begun a new fortification and plantation upon their” (the New Haven adventurers) “duly purchased lands;” alluding to the recent purchase and settlement of the Dutch at New Castle on the Delaware, as before stated. The commissioners, having attended to the petition, came to the resolution of writing to the Dutch governor, therein protesting against his injurious proceedings, asserting the English right, and requiring satisfaction for the damage done to their friends and confederates of New Haven; which they did. They at the same time declared to the petitioners, in the way of answer to their petition, that, although they did not think it proper then to enter into hostilities against the Dutch, “choosing rather to suffer injuries and affronts, (at least for a time,) than in any respects to seem to be too quick, yet, if they (the adventurers) should see cause again to endeavour the planting of their forementioned purchased lands in Delaware, at any time within twelve months from that date, and for that end should, at their own charge, transport together one hundred and fifty or at least one hundred able men armed with a vessel or vessels and ammunition fit for such an enterprise, all to be allowed and

* It is proper to subjoin here, that the Dutch subsequently, in 1653, denied, that “these messengers were put into fast hold,” but asserted, that they “were civilly used and entertained at the house of the captain lieutenant of the towne, Martin Crygar.” See Hazard’s Collections, vol. ii. p. 260. It is probable, that they were entertained well, but kept confined to the house by a guard.

CHAPT. approved by the magistrates of New Haven jurisdiction, that
 VI. then, in case they meet with any hostile opposition from the
 1654. Dutch or Swedes, while they carry themselves peaceably and inoffensively, they may call for further aid and assistance.”*

It appears farther from the proceedings of the commissioners of the united colonies, in 1651, that soon after the outrages committed at Manhattoes by the Dutch on the New Haven settlers, as just stated, both the commissioners and Mr. Eaton, governor of New Haven, wrote to Mr. Winslow, then in London as agent for the New England colonies, concerning these injuries. Governor Eaton, after stating to him “the just title of the New Haven traders to considerable parts of land on both sides of Delaware bay and river,” desired the aid and assistance of Mr. Winslow “in procuring a patent” for them, from the government of England. The commissioners also, in their letter to the same agent, after stating their sense “of the dishonour put upon the English nation by this unjust affront of their duty to preserve the English title to so considerable a place as Delaware, desire informacon what esteeme *the old pattents for that place have with the parliament or counsell of state, where there hath been no improvement hetherto made by the pattentees*,—whether the parliament hath granted any late pattents, or whether in granting they reserve not libertie and encurragement for such as have or shall plant upon their formerly duly purchased lands, as also how any engagement by the collonies† against the Dutch upon the fore-mentioned occasion, will bee resented by the parliament.”‡ It must be confessed, that these injuries seem to indicate a full knowledge, in the commissioners of the united colonies, of lord Baltimore’s right and title to the lands on the west side of the Delaware, and that “the old pattents,” mentioned by them, must have included lord Baltimore’s patent for Maryland, as

* See the petition, and the proceedings of the commissioners thereon, at large, in the records of the New England colonies, of September session, 1651, published in Hazard’s Collections, vol. ii. p. 192. The names of the petitioners, whom we may suppose to have been the principal adventurers in the proposed settlement, were Jasper Graine and William Tuttill. It is proper to mention here, that the New Haven traders and settlers, in June 1651, prior to this session of the commissioners for the united colonies in September of the same year, applied to the *colony of Plymouth* for aid in settling their plantation at Delaware, but the court of that colony answered,—“that they would have no hand in any such controversy.” See Hazard’s Collections, vol. i. p. 554.

† This seems to have been confined in its meaning to the New England “colonies” only.

‡ Hazard’s Collections, vol. ii. p. 181.

CHAPT.
VI.
1654.

well as that of Ferdinando Gorges's, under which last the colonies of New England extended their claim southward to the fortieth degree of latitude.* But it is evident, that if by the words—"for that place"—they meant to include the scite of the Dutch fortification at New Castle and the lands purchased by the Dutch from the Minquaas, as before mentioned, Gorges's grant could not assist them; for, the most northern limits of the fortieth degree, by which New England was bounded, would have excluded them not only from the scite of New Castle, but from every part of the purchase from the Minquaas, the fortieth degree extending considerably above the mouth of the Christina creek. Indeed, the desire of the New Haven traders, backed by the commissioners, to procure a *new patent* for the lands on the Delaware, through the agency of Mr. Winslow, seems to manifest a consciousness, that the "ancient patent" of New England would not cover their newly "purchased lands on the Delaware." They ought to, and must, have known, that lord Baltimore's patent extended to where New England ended, to wit, to where the fortieth degree ended and the forty-first commenced; and yet, unaccountably, no attention to it seems to have been paid by them, unless his patent be one of those, to which they alluded in the passage just quoted. It does not appear, however, that the New Haven traders ever obtained a patent for their "purchased lands on the Delaware," as desired by them, through their agent in England. The changeable and revolutionary state of the government of England, and the approaching war with the Dutch, might have prevented it.

The disputes between the Dutch and the English of New Haven, relative to the lands on the Delaware, seem, after these violences of the year 1651, to have subsided into a state in some degree conformable to the before mentioned article in the agreement of 1650 between the Dutch governor and the New England commissioners, to wit, that both parties should remain *in statu quo prino*, till the right should be finally determined by the two states of England and Holland. But the Swedes, not being a party to this agreement, do not appear to have been bound by it. In the year 1652, a Swedish vessel of considerable force, with a few troops on board, conducted by Risingh, a Swedish officer, anchored near the fort of Niewer Amstel, (now New

* That they relied upon Gorges's grant, is evident from their expressions on the same subject in the year 1653. See Hazard's Collections, vol. ii. p. 212 and 269.

CHAPT. VI.
1654. Castle;) of which he soon acquired possession by stratagem, as it is said, rather than by force.* The particulars of this stratagem are more plainly expressed by the historian of New York. Risingh, under the disguise of friendship, came before the fortress, fired two salutes, and landed thirty men, who were entertained by the commandant as friends; but he no sooner discovered the weakness of the garrison, than he made himself master of it, seizing also upon all the ammunition, houses, and other effects of the (Dutch) West India Company, and compelling several of the people to swear allegiance to Christina queen of Sweden.† On the capture of this fort by the Swedes, the name of it was changed from Niewer Amstel to fort Casimir, probably in honour of John Casimir then king of Poland, for whose election Christina had become a zealous advocate. It would seem also, that soon after this the Swedish fort between the Brandywine and Christina creeks was rebuilt.‡ The Swedes now appear, after these events, to have gained a complete ascendancy over the Dutch in their colonization of the lands on the Delaware; and perhaps, in virtue of this apparent superiority, the Indians were induced, at a meeting held by the Swedes with their chiefs, in the same year, at Printz's Hall, on Tenecum island, to enter into a treaty with them, in which they engaged "to assist and stand by each other in all future attempts, that should be made against each party." This league or agreement is said to have been faithfully kept by the Indians. The Swedes are said also to have entered into terms of friendship with both the English and the Dutch *in the neighbourhood*, either immedi-

* Chalmers's Annals, p. 632.—Some doubt, however, seems to arise, as to the time of this transaction, from the circumstance, that Risingh was not governor of the Swedes on the Delaware until the year 1654; and, as the taking possession of the fort seems to be agreed by all to have been done by Risingh, it would seem most probable, that it was done by him after he was governor, consequently not until 1654. But, as Chalmers appears to rely, for some of the facts stated by him in this part of his Annals, not only on *Smith's History of New York*, but also on "a very long and intelligent deposition of Van Sweringen on this subject," among "Maryld. Pap. iv. c. 35," (in the English plantation office,) which he cites, it is possible that he may be correct, and that the expedition might have been "conducted by Risingh" before he was governor.

† Smith's Hist. of New York, p. 18.

‡ Chalmers (in his Annals, p. 632,) observes, that Risingh, "soon after the capture of fort Casimir, erected on the same river, five miles higher, Fort Christina, in honour of his queen." But, it seems to be certain, that the Swedes had built a fort, laid out a town, and made their first settlement there, in the year 1631. It is probable, however, that the fort there, built in 1631, was the one blown up in 1643, as before stated, and was now rebuilt by Risingh.

ately or soon after the preceding capture of Niewer Amstel.* CHAPT.
 Whether these "*English* in the neighborhood" were the Mary- VI.
 landers or New Haveners, we are not informed; most probably 1654.
 the latter; for, it appears from subsequent documents, that the
 government of Maryland had been unaccountably passive in
 suffering both the Dutch and Swedes to intrude into their terri-
 tories, and had as yet never attempted to hinder or even molest
 them in their settlements on the Delaware, unless the attempt by
 the Marylanders, in 1642, to form settlements on the Schuylkill,
 as herein before mentioned, might be so deemed. There was
 then no occasion of a treaty of peace between the English of
 Maryland and the Swedes on the Delaware; but between the
 latter and the New Haven traders more serious collisions had
 taken place.

In the year 1653, the New England colonies were alarmed
 with reports of a contemplated plot, said to have been formed by
 the Dutch government at Manhattoes and the neighbouring In-
 dians, to make war upon and to break up the English colonies
 of both New Haven and Connecticut. The commissioners for
 the united colonies accordingly, at their special session at Bos-
 ton called on that account in April, 1653, entered into zealous
 and ardent debates on the propriety of their going to war at once
 with the Dutch at Manhattoes. It will be recollected, that a
 furious naval war was then raging between the two mother coun-
 tries,—the states of England and Holland, chiefly in the English
 channel. This might be supposed to have been sufficient in itself
 to have set their respective colonies in America in a state of hos-
 tility. But the interested motives of the politicians of Massachu-
 setts preponderated. They found their trade with the Dutch rather
 profitable, and the expenses of their proportionate contribution
 to the maintenance of a war would have been somewhat oppres-
 sive. The colony of Massachusetts, being more powerful than
 all the three other colonies of the union combined, and the ses-
 sion of the commissioners being held at Boston, and the general
 court of that colony positively refusing to enter into any war
 whatever, it happened, as it ever will in all unequal confederacies,
 that the interest of the greater state will swallow up that of all
 the rest. The colony of New Haven, therefore, was left ex-

* This peace with the Dutch seems to confirm in some degree the allegation of
 Chalmers, before mentioned, that the capture of Niewer Amstel or fort Casimir
 was in 1652, as the Dutch would not probably so soon have broke the peace
 they had entered into, as they did in 1655, if the capture had been made in 1654.

CHAPT. VI. posed to all the dangers attending their frontier situation. The minor considerations of their injuries at Manhattoes and of their settlements on the Delaware, though ardently urged by them, had but little weight. The New Haven traders thus seem, from these discouragements, to have hereafter gradually relinquished their contemplated colony on the Delaware. The general court, that is, the assembly of that colony, however, seems to have continued its patronage of the undertaking. Being informed, perhaps, of the ascendancy, which the Swedes had gained over the Dutch on the Delaware, they directed their governor (Eaton) to enter into a correspondence with "the New Swedish governor, (Risingh,) concerning "New Haven's right to several parcels of land on both sides of Delaware bay and river." This was done by him in July 1654, to which an answer (in Latin) was returned by the Swedish governor in August of the same year. But this correspondence, as it is stated, was "without any satisfaction. Governor Eaton laid the affair before the commissioners of the united colonies assembled at Hartford in September, 1654; who again wrote to the "New Swedish governor," but no record appears of any answer thereto. The catastrophe attending the Swedish settlements on the Delaware, in the next year, 1655, most probably put a final period to any further correspondence on the subject.

State of the
Roman
Catholic
religion at
this time
in Mary-
land.

After this necessary digression, as it appears, on those settlements on the Delaware, which subsequently became so important to the province of Maryland, we are now to return to the more domestic transactions of the colony. Among these we find on our records one, which, though apparently of a trivial and private nature, not deserving the public notice of history, yet, as it develops in a particular manner the *religious* state of the province at this time, may be considered as worthy of attention. A young lady, of the name of Eleanor Hatton, the niece of Mr. Thomas Hatton, who was then secretary of the province and his lordship's attorney general of the same, had been (in some manner not mentioned in the record) persuaded or enticed to place herself under the care and in the house of a certain Luke Gardiner; who, as it seems, must have been a zealous Roman Catholic, if not a priest. Her mother, after the death of the young lady's father, the brother of Mr. Thomas Hatton, had married Mr. Richard Banks. It was suspected and stated by both the mother and uncle of this young lady—Mr. Thomas

Hatton and Mrs. Banks, to the governor and council, who probably upon this occasion were then sitting as a provincial court, that this detention of Miss Eleanor Hatton by Luke Gardiner was "to train her up in the Roman Catholic religion, contrary to the mind and will of her said mother and uncle, who had often demanded her of the said Luke, who refused to return her to either of them." It does not appear, either from the record or the concomitant circumstances of the transaction, that this enticement of the young lady away from her mother or her uncle was done with any immoral intentions of an illicit amour. The record states, that "the said girl was by her father, (brother to the said Mr. Hatton,) a little before his death, recommended to the care and tuition of her said uncle, who had been at great charge about her transportation and otherwise." From this we may infer, that Mr. Hatton's brother had died in England, and that his widow and daughter had come to Maryland to be under the care and patronage of Mr. Thomas Hatton. It would seem, that agreeably to the rules of law, as it was then and is now in relation to this subject, that the mother, being the *natural* guardian of the child, would have a right superior to that of any other person to the care and custody of her child, unless perhaps the disposition of the child, as above mentioned, by the father to his brother, Mr. Thomas Hatton, might have superceded such *natural* right of the mother, or her second marriage have deprived her of that right, and thrown it upon the guardian by will. But, as the proceedings in this case appear to have been at the joint instance and application of the mother and uncle, their conflicting rights do not appear to have entered into the question. The record of the writ, (of *habeas corpus*, as it appears to be,) further states,—“the which unsufferable dealing of the said Luke Gardiner is, (as I apprehended,*) not only a great affront to the government, and an injury to the said girl's mother and uncle, but likewise of *very dangerous and destructive consequence in relation to the peace and welfare of this province.*” The writ then commands lieutenant Richard Banks, (the husband of the mother,) to whom it appears to have been directed, to seize upon by force the person of the said Eleanor Hatton, “to bring her before the governor and council at St. Mary's to be disposed of as shall be fit,” and to arrest the said Luke Gardiner, and bring

* The governor, in whose name the writ issued, as chief justice of the provincial court.

CHAPT. him likewise before the governor and council "to answer unto
 VI. such things as shall be objected against him by the said Mr.
 1654. Hatton either as attorney general for his lordship or on his own
 behalf."* As the purpose of Luke Gardiner's detention of the
 young lady was, as alleged in the record, "to train her up in the
Roman Catholic religion," we must suppose this to have been
 the meaning of the above expressions,—“a great affront to the
 government, and of very dangerous and destructive consequence
 in relation to the peace and welfare of the province.” It must
 be acknowledged, that this goes far in demonstrating, that the
 Roman Catholic inhabitants of the province had now lost all
 their former influence in the government of the province, which
 they themselves had founded. Although there had been some
 English statutes made before this, in the reigns of James and
 Charles the first,† which imposed heavy penalties against train-
 ing up children in the Roman Catholic religion, as well as dis-
 abilities on the children themselves, yet we should have supposed,
 that the province of Maryland, founded as it was by Roman Ca-
 tholics, would have been considered as exempt from the opera-
 tion of those statutes. But, as they were notoriously made, in
 their origin, principally to please those very Puritans, who were
 now at this period of time, wielding the government of England,
 it is probable, that the severe penalties contained in them were now
 more strictly enforced than ever in that country, and that the go-
 vernment of Maryland, now in the hands of the *Protestants*, (though
 they were probably of the old church of England,) had no hesi-
 tation in the case of this sort, to avail themselves of the legis-
 lative authority of the mother country. We cannot but entertain
 ideas and sentiments of great injustice done to any number of the
 human family, who having carved out to themselves a retreat and
 an asylum for those of their own way of thinking in religion, where
 they hoped to enjoy their peculiar tenets in that religion after their
 own manner and direction, are yet, contrary to their most sanguine
 expectations, in the course of a few revolving years unexpectedly
 deprived of the supreme direction of that asylum, which they had
 thus fondly secured, as they thought, to themselves. The lord
 proprietary, and his adherents in Maryland, without doubt, enter-
 tained at this time sentiments of that nature. But his lordship,
 as well as his advisers, ought to have been sensible, that they had

* “Council Proceedings from 1636 to 1657,” p. 297.

† 1 *Jac.* 1, c. 4;—3 *Jac.* 1, c. 5;—and 3 *Car.* 1, c. 2.

some cause to reproach themselves, with having brought on themselves, by their own conduct, this state of things. Had the Roman Catholics of Maryland followed the example of the Puritans of New-England, in obstinately and pertinaciously refusing any access whatever into their colony to any person who would not agree to live under their *platform* of religion, as they called it, the Roman Catholic religion might have been at this day the established religion of Maryland. The English government, through all its own vicissitudes as well as those of the New England colonies, from their first planting to their declaration of independence, tolerated the Congregational or Independent sect, as the *established* religion of New England, and by connivance permitted them to persecute and exclude from their civil government as well as hierarchy every presumptuous intruding heretic. It is probable, that the English government would have acted in the same manner by the Roman Catholics of Maryland. But lord Baltimore imprudently, at the very outset or commencement of his colony, adopted the sentiment and resolution of universal toleration.* The admission of the Puritans into Maryland, after they had been ferreted out of Virginia by Sir William Berkeley, as has been herein before stated, together with the unfortunate coincidence of events in England, where these Puritans had seized on the supreme power, gave a death blow to the Roman Catholic interest in Maryland. From this period they never afterwards could regain their just and due influence in the province, although for many subsequent years they continued to form the majority of the inhabitants thereof.

We have herein before deduced the affairs of the mother country to the surrender by the *little* parliament, (Barebones',) of all their powers back again into the hands of Cromwell, on the twelfth of December, 1653. It has been very justly observed by several different historians,† that this surrender of the *little* parliament must have been in consequence of a preconcerted scheme of Cromwell, his military officers, and such members of the parliament as were devoted to them; for, within four days afterwards, on the sixteenth of the same month, (within which interval there was not time to have prepared the subsequent proceedings, particularly the form of government produced by them,) Cromwell proclaimed in Maryland as lord protector.

* This appears from the proceedings in Lewis's case, and the *proclamation* therein alluded to, as stated in the first chapter of this work.

† Lord Clarendon, Rapin, and Tindal in his Appendix to Rapin.

CHAPT. VI. the commissioners of the great seal, and the lord mayor and aldermen of London, were sent for to attend Cromwell and his council of officers at Westminster hall, where, in the presence of the commissioners sitting upon their usual seat, (in the court of chancery,) the declaration of the council of officers was read, by which it was declared,—“That the government of the commonwealth should reside in a single person, that that person should be *Oliver Cromwell*, captain general of all the forces in England, Scotland and Ireland, and that his title should be lord protector of the commonwealth of England, Scotland, and Ireland, and of the *dominions and territories thereunto belonging*.” Immediately after which, an instrument of writing on parchment was read, entitled—“The government of the commonwealth of England, Scotland, and Ireland, and *the dominions thereunto belonging*.” In the 33d article of this form of government, Oliver Cromwell was declared *Lord Protector*, &c., “for his life.” The administration of the government was thereby vested in the lord protector, “assisted with a council, the number whereof should not exceed 21, nor be less than 13.” All writs, process, commissions, patents, grants, and other things, which had before run in the name and style of “the keepers of the liberty of England by authority of parliament,” should for the future run in the name and style of “the lord protector;” and provision was therein made for the calling a parliament in the September following, and triennially ever afterwards. Whilst this form of government was reading, Oliver stood, in the court of chancery, uncovered and with his hand on the bible, and, when the reading of it was over, took the oath prescribed for the faithful observance of it.* This ceremony being over, Cromwell was conducted to the palace of Whitehall in great pomp; Lambert carrying the sword of State before him; and from that time the title of highness and lord protector

* See this form of government at large in *Tindal's* Appendix to *Rapin's Hist. Eng.* It is said by *Hume*, that this instrument of government was drawn up by general *Lambert*. It is also said, by lord *Clarendon*, (in his folio edit. 711,) “that *Lambert* had helped to make *Cromwell* protector upon his” (*Cromwell's*) “promise, that he should succeed him.” Thus are the secret causes of revolutions to be traced. Whoever will take the trouble of reading this form of government, now introduced for England, will perceive a remarkable resemblance in it to many of those subsequently made for the different States of America. It might be conjectured, that *Franklin* copied that injudicious first constitution, which he drew up for Pennsylvania, consisting of a single legislative assembly, with an executive council and a president thereof, principally from this of *Lambert*.

was given him. Immediately after, he was proclaimed as such at London, and with all possible expedition by the sheriffs and other officers throughout England, Scotland, and Ireland. We shall see also that "the dominions thereunto belonging," across the Atlantic, were ready to submit to this all-overwhelming military power in England. When we consider, that, in the early settlements of British America, voyages across the Atlantic to their colonies in that quarter of the globe were not generally undertaken in the midst of winter, about which time Cromwell's inauguration had taken place, we must allow a somewhat longer time for the conveyance of intelligence to America than it usually requires in modern times. It appears therefore, that governor Stone, in Maryland, did not receive information of this remarkable revolution in England until about the last of April or the first of May, 1654. With all proper expedition, as it seems, he hastened to comply with the requisite ceremonies on this important occasion. Without any apparent hesitation, he issued the following proclamation in relation to that great event.

"By the lieutenant and governor of Maryland.

"A PROCLAMATION.—Whereas I have lately received certain intelligence, that the government of the commonwealth of England, Scotland, and Ireland, by a lord protector and successive triennial parliaments, is already there established, and that Oliver Cromwell, captain general of all the forces of that commonwealth, is declared lord protector of the said commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging for his life, and whereas the government established here under the lord proprietary of this province according to his patent thereof is subordinate unto and dependant upon the aforesaid government of the commonwealth of England, Scotland, and Ireland in chief under God as one of the domains thereunto belonging, I have therefore with the advice of the council for this province thought it necessary, and do hereby in the lord proprietary's name make publication of the premises strictly charging and commanding all and every person or persons of what quality or condition soever inhabiting, residing or being within this province to take notice thereof and to conform and submit themselves with all due obedience and subjection to the government so established as aforesaid in chief under God, and all sheriffs and other public ministers and officers whom it may concern, are required to cause this proclamation to be forthwith

CHAPT. published in their respective counties and other usual places for
 VI. that purpose within this province, to the end that none may have
 1654. cause to pretend ignorance in this behalf. Given at St. Mary's
 the sixth day of May, *anno dom.* 1654.

WILLIAM STONE.

"Further likewise the inhabitants of this province and others whom it may concern are required to take notice, that in commemoration of this present solemnity I have thought fit to grant a general pardon of all offences committed in this province since the last general pardon with such exceptions and in such manner as shall at the publication thereof the next court be made apparent. Given at St. Mary's the day and year abovesaid.

WILLIAM STONE."*

Agreeably to the notice expressed in the supplementary part of the preceding proclamation, another proclamation appears on the records, dated May 23d, 1654, (the time of holding the *next* provincial court, as we may suppose,) purporting to be a "general pardon," with the following "exceptions," to wit,—“except for murder, treason, or forfeitures incurred but not yet satisfied, and except also such persons and offences as the lord proprietary hath heretofore excepted from pardon,† and except likewise all rebellion, conspiracy, combination or endeavour used at any time heretofore by any person against the lord proprietary's right and dominion over this province.—William Stone.”‡ These exceptions demonstrate, that governor Stone had now formed his fixed resolution of renouncing the “reducement” of the province, as before settled by the commissioners—Bennett and Clayborne, and of reassuming his powers under the lord proprietary of the province.

Calvert
county
erected.

It will be recollected, that in the year 1649, an agreement had been entered into between lord Baltimore himself and Mr. Robert Brooke, both then in England, concerning the transportation of the latter, together with his numerous family, into Maryland, for the purpose of settling there; and that, in consequence thereof, a new county, called Charles county, had been

* “Council Proceedings from 1636 to 1657,” p. 302.

† The “persons,” whom the lord proprietary had heretofore excepted from pardon, were “William Clayborne, Richard Ingle, and John Durford, mariner.”—These exceptions were contained in his commission to governor Stone of August 6th, 1648. See the commission at large, as before referred to, in note (LXII.) at the end of this volume.

‡ “Council Proceedings from 1636 to 1657,” p. 303.

erected, of which Mr. Brooke had been made, by a special commission or directions from his lordship, *commander*, with all the honours, privileges, profits, &c., as were then belonging to the place and office of commander of a county.* In pursuance thereof a special "order or constitution," as it is called, had been made by the governor and council, on the 21st of November, 1650, (probably soon after the arrival of Mr. Brooke and his family into the province,) "touching the erecting some part of the south side of Patuxent river into a county by the name of Charles county."† It has been seen, that Mr. Brooke exhibited a remarkable promptness in coinciding with Bennett and Clayborne on the "reducement" of the province in 1652, and was on that occasion, in consequence thereof, without doubt, constituted by them president of the council, formed by them for the government of the province, on the displacing of governor Stone and his council. This conduct of Mr. Brooke had been, most probably, soon communicated to lord Baltimore, and appears to have given him some displeasure; for, by his instructions to the governor and council, bearing date the 28th of September, 1653, he "discharged Robert Brooke, esqr., late commander of Charles county, from being one of the council, conservator or justice of the peace, or commander of any county within this province."‡ In conformity to these instructions, as it would seem, governor Stone "thought fit, *for divers reasons relating to the public good*, and did, this day," (July 3d, 1654,) "with the advice of the council, make void and nullify the order or constitution," just mentioned, touching the erecting of Charles county, and instead thereof, as it is expressed in the record, "did now erect, make, and appoint both sides of Patuxent river into one county by the name of Calvert county, bounded on the south side with Pynehill river or creek to the head thereof, and from thence through the woods to the head of Patuxent, being the northerly bound of St. Mary's county, and bounded on the north side with the creek upon the western side of Chesapeake bay called the Herring creek, and from thence through the woods to the head of

CHAPT.
VI.
1654.

* See before, p. 376.

† I have not found this order of November 1650 on our records, but it is stated as above in the document now on record, from whence these facts were taken, purporting to be a record of the proceedings of the governor and council, bearing date, "*Fertio die July, 1654*,"—in the book entitled, "Council Proceedings from 1636 to 1657," p. 302.

‡ These "Instructions" do not now appear on record, but it is stated, as above, in the document last referred to.

CHAPT. VI. Patuxent river, being the southerly bound of Ann Arundel county,* and the governor this day likewise appointed Mr. Richard Collet to be high sheriff of Calvert county aforesaid.”†

1654.

The province is again reduced.

This removal of Mr. Brooke, and perhaps others inclined to Puritanism, from all offices in the province, together with governor Stone's renunciation of the “reducement,” as settled by the commissioners—Bennett and Clayborne, in 1652, and the before mentioned procedure, relative to the enforcement of the oath of fidelity to lord Baltimore, had, as might indeed have been expected from the temper of the Puritans of Ann Arundel, afforded them ample pretences for their opposition to and revolt against all lawful authority under the lord proprietary exercised by his government at St. Mary's. It seems also, that governor Stone had, on the fourth of July, the day after the last mentioned proceeding relative to Calvert county, issued and published a proclamation, (not now extant,) in which he charged the commissioners—Bennett and Clayborne, and indeed the whole puritanic party, mostly of Ann Arundel, with “drawing away the people, and leading them into faction, sedition, and rebellion against the lord Baltimore.”‡ Induced by this pro-

* It is difficult at this day to ascertain with precision, what river or creek is here meant by *Pyne hill* river. A creek called *Piney* creek, emptying from the eastward into the eastern branch of the Potowmack, near Washington city, is the only creek or river denoted on Griffith's map of Maryland, (the last and best,) which could answer to the above description. But a line drawn from “the head thereof to the head of Patuxent,” would run nearly north-west, about forty miles, to the north-west extremity of Ann Arundel county, quite wide of what could have been made as the northern bounds of St. Mary's county. It rather appears, therefore, to have been intended to run from the head of Piney creek eastwardly to what is called the *western* branch of the Patuxent, which branch, possibly, in the unexplored state of the province, might have been then deemed the main branch of the river, and the head thereof—the head of the Patuxent. So that this line, stretching across the peninsula of St. Mary's was to form a division line between the northern parts of St. Mary's county and that part of the new erected county of Calvert lying on the western side of the Patuxent, comprehending what is at present the northern half of Prince George's county, and indefinite as to its north-western extent. Immediately on the north and on the bay shore, however, Calvert county seems to have been now bounded by the southern extent of the elder county of Ann Arundel, to wit, by a line drawn from Herring bay “to the head of the Patuxent” again, evidently intending to the head of what is now deemed the western branch thereof, as before mentioned. But, by an order of the session of assembly of 1654, the inhabitants of Herring creek and the *Cliffs* were “to pay levy in Ann Arundel county;” which may probably have been the cause, why Calvert county does not now extend quite to Herring creek.

† “Council Proceedings from 1636 to 1657,” p. 302.

‡ Mr. Leonard Strong, then one of the leading Puritans of Providence on the Severn, has, in relation to this proclamation of the 4th of July, thus expressed himself in his pamphlet entitled, “Babylon's Fall in Maryland,” &c. “In the

clamation of governor Stone, as well as by his general conduct in reassuming the powers of government within the province, under the name and authority of the lord proprietary, the commissioners—Bennett and Clayborne, about this time, (in July, as it would appear,) returned to Maryland, probably in the first place to Providence, (now Ann Arundel,) with intentions of effecting another “reducement” of the proprietary government of the province. For this, it was alleged by them, that they had “authority derived to them from his highness the lord protector.” But, on the contrary, there is strong evidence to shew, that this “authority” assumed by them, could be at most only an *implied* and not an *express* authority.* This may be fairly inferred from the manner, in which Mr. Strong, the active agent of the Puritans, has stated this fact. “The commissioners for the commonwealth of England,” he says, (to wit, Bennett and Clayborne,) “hearing, that new orders and instructions were come to Maryland from lord Baltimore, and that one *Scarborough*, a mischievous instrument of the lord Baltimore,† was

CHAPT.
VI.
1654.

year 1654, upon some instructions and relations from the lord Baltimore out of England, captain William Stone and Mr. Thomas Hatton, and the *Popish councillors*, rose up against the reducement, displacing those whom the state’s commissioners had placed, and introducing *the old Popish council*; calling that which was done by commission from the council of state in England, rebellion against the lord Baltimore; and those, that were actors in it, factious and seditious persons: which was done by a proclamation full of railing terms, published at Providence in the church meeting.” These terms,—“*Popish council and councillors*,” were evidently introduced here by Mr. Strong for the purpose of inflaming the people of England with prejudice against lord Baltimore’s government of Maryland. The charge moreover, was false; for, it is certain, that governor Stone and the majority of his council, were *Protestants*, though perhaps not *Puritans*.

* It is extraordinary, that most writers relative to Maryland, and even historians of Virginia, constantly fall into the error of imputing all the transactions of the commonwealth of England, in relation to the English colonies, to Oliver Cromwell. In Mr. Kilty’s useful work entitled, “*The Landholder’s Assistant*,” he, on several occasions, speaks of Cromwell’s seizure of the government of Maryland. The commissioners—Bennett and Clayborne, in their “reducement” of Maryland in 1654, certainly acted only under their former commission from the council of state and parliament in 1651, and had no express commission from the lord protector. It is certain, that the lord protector, (Cromwell,) during the whole of his protectorate, paid so little attention either to Maryland or Virginia, that he never would take the time to decide any of their disputes; as will herein afterwards appear.

† It is possible, that this might be the same “*Edward Scarborough*, of Accomack in Virginia,” before mentioned, (see p. 417,) whom Sir William Berkeley had sent, in 1651, to fix a settlement on Palmer’s island, at the mouth of the Susquehanah. He must have been at that time greatly hostile to lord Baltimore.

CHAPT. VI.
1654. gone up to Maryland, resolved to come and see in what condition their affairs stood." This seems to leave a strong inference, that these commissioners acted on the present occasion (the second "reducement,") altogether under their former authority—the commonwealth of England, and not under the protector; for, if new orders had come to them from his highness the lord protector, Mr. Strong, their zealous partizan, would not have failed to have stated, in his pamphlet, so important a circumstance towards the vindication of these commissioners. On the contrary, he has expressly stated, in his pamphlet, a circumstance further corroborating the supposition, that the commissioners,) Bennett and Clayborne) acted, on this second "reducement" of Maryland, under no other authority than their first commission from the council of state and parliament for the "reducement" of Virginia, and of Maryland also, as they construed it; in which commission captain *Curtis* was also a commissioner. He says, that "at the assembly of October 1654, there was a full and lawful representative of the whole province, where the act of reducement of this province *by commission from the council of state in England* to Richard Bennett, esqr., colonel William Clayborne, and *Edmund Curtis*, was freely and fully acknowledged by the whole assembly; the burgesses of every respective county and limit confirming the same, and submitting thereunto." The acknowledgment of the act of "reducement" of Maryland by the assembly of October, 1654, here referred to by Mr. Strong, seems to be the act of that assembly, entitled, "The act of recognition," (herein after more fully stated,) in which, although the names of Mr. Bennett and Mr. Clayborne are mentioned as commissioners, without that of Mr. Curtis, as is done by Mr. Strong, yet Mr. Strong's comment on that act, (he himself having been at that session of assembly a sitting member,) serves to demonstrate, that the first commission, which included captain Curtis as well as Bennett and Clayborne, was the only commission intended by the said act, and under which the two last mentioned commissioners, (Mr. *Curtis* being either absent or deceased,) acted on the occasion of this second "reducement." But Mr. Langford, in his "refutation" of Mr. Strong's pamphlet, has positively denied, that they had any such authority from the lord protector. He says, "and yet notwithstanding, after the said dismissal," (of Mr. Matthews's petition to the parliament, which began in July, 1653, before mentioned,)

“and dissolution of that parliament, the sayd Mr. Bennett and captain Clayborne did again, in July, 1654, come into Maryland, and with the assistance of some of the people above mentioned,” (the Puritans of Providence,) “by force of arms turned out captain Stone and the lord Baltimore’s other officers, and put others in their roomes; *by what authority no man knows*; for, although they had had, as they pretended, an authority, (which in truth they had not,) from the parliament which was dissolved in April 1653, to do what they did in Maryland in 1652, according to Mr. Strong’s relation, yet, after the dissolution of that parliament, the authority from it ceased, so as all proceedings in prosecution thereof afterwards was unwarrantable, unless that authority, which they pretended, had been given them by an act or ordinance of parliament for a certain time not expired, or confirmed by the succeeding supream authority heer,” (in England,) “which it was not.”

CHAPT.
VI.
1654.

The commissioners having now come up from Virginia to Maryland, whether lawfully authorised or not by the present government of England, proceeded in their holy work of rooting out the “Popish councillors” of Maryland. It may be best here to follow their own statement of their proceedings on this occasion.* About the fifteenth of July, “they applied themselves to captain William Stone the governor, and council of Maryland;” (for what purpose they do not expressly state, but it is to be inferred, for the purpose of inducing the governor and council to submit to their directions;†) “who, returning only opprobrious and uncivil language, presently mustered his whole power of men and soldiers in arms, intending to surprise the said commissioners, and (as could be imagined) to destroy all those that had refused the said unlawful oath, and only kept themselves in their due obedience to the commonwealth of England, under which they were reduced and settled by the parliament’s authority and commission. Then the said commissioners, in quiet and peaceable manner, with some of the people of Patuxent and Severn, went over the river of Patuxent,‡ and there at length

* This statement appears by way of preamble to their order, declaration, or “commission for the administration of justice,” &c., dated July 22d, and enrolled August 8th, 1654; which the reader will find at large, as hereafter more particularly referred to in note (LXXXIV.) at the end of this volume.

† Mr. Strong says, they “applied themselves in a peaceable and loving way to persuade them into their due and promised obedience to the commonwealth of England.”

‡ From this it would appear, that the scene of these first negotiations was on the Calvert side of the Patuxent; from whence the commissioners supported by

CHAPT. received a message from the said captain Stone, that the next
 VI. day he would meet and treat in the woods; and thereupon be-
 1654. ing in some fear of a party to come from Virginia he condescend-
 ed to lay down his power lately assumed from the lord Balti-
 more, and to submit (as he had once before done) to such go-
 vernment as the commissioners should appoint under his high-
 ness the lord protector.”

It will be recollected, that Mr. Bennett, one of these commis-
 sioners, now regulating the affairs of Maryland, and now advan-
 cing in hostile array against the legitimate governor thereof, was,
 at this very time also, governor of Virginia.* It is to be pre-
 sumed, therefore, that this “party to come from Virginia” had
 been preconcerted and directed by governor Bennett’s orders, so
 as to afford timely support and aid to the Puritans from the Sev-
 ern and the Patuxent, then under his own special command,
 for the more certain and effectual reducement of the colonists of
 St. Mary’s.† With the Puritans from the Severn in his front

the Puritans from the Severn and such of their partizans on the Patuxent, as de-
 clared for them, advanced across that river into St. Mary’s, as a body of armed
 militia would, “in a quiet and peaceable manner,” where they met with no op-
 position.

* This is confirmed by an extract from the records of Virginia, inserted by
 Burk, in his *Hist. of Virg.* vol. ii. p. 100, note; wherein the appointment of Mr.
 Digges, as one of the council of Virginia, by Richard Bennett, *governor*, is
 stated, as of the 22d of November, 1654.

† It is not improbable, that this expected “party from Virginia” was to have
 been composed of a levy of men from the counties of Northumberland and West-
 moreland, situated just across the Patowmack, nearly opposite to St. Mary’s
 county; which party would have then taken the inhabitants of St. Mary’s in the
 rear, when they were marching to oppose the Puritans of Severn on the Patux-
 ent. It is worthy of remark, that these counties of Virginia, opposite to the
 then settled parts of Maryland, appear to have made greater and earlier progress
 in population than any of the other counties of Virginia, except those situated
 on the James river. From an extract from the records of Virginia, (stated by
 Burk, in his *Hist. of Virg.* vol. ii. p. 101,) bearing date November 20, 1654,
 wherein the number of burgesses for each respective county, (in Virginia,) is re-
 gulated, it appears, that there was not at that time a single county in all that in-
 termediate space of country between the York and Rappahanock rivers, except
 Gloucester county; which was to send two burgesses to the assembly; while, in
 the northern neck, as it is called, there were the counties of Northumberland,
 Westmoreland, and Lancaster, of which the two last mentioned were to send
 two burgesses each, and the first one only. The population of Westmoreland, at
 this time, is to be more particularly ascertained by a statement in the same ex-
 tract, that Westmoreland then contained “170 tithables.” According to Beverly,
 (*Hist. of Virg.* p. 218,) who wrote in the beginning of the eighteenth century,
 “all white men, above the age of sixteen years, were called *tithable*.” Negroes
 also were counted as tithable persons; but of them, we may suppose, that in
 1654 there were very few in these northern counties. This would give to those

and the Virginians from the northern neck in his rear, governor Stone could with prudence do nothing else than submit, as just stated, and thereupon the commissioners issued their order or declaration, bearing date, "at Patuxent river in the province of Maryland, the 22d day of July, 1654," comprising therein a commission "for the conservation of the peace and public administration of justice within the province of Maryland to captain William Fuller, Mr. Richard Preston, Mr. William Durand, Mr. Edward Lloyd, captain John Smith, Mr. Leonard Strong, Mr. John Lawson, Mr. John Hatch, Mr. Richard Wells, and Mr. Richard Ewen,* or any four of them, whereof captain William Fuller, Mr. Richard Preston, or Mr. William Durand to be always one, to be commissioners for the well ordering, directing, and governing the affairs of Maryland under his highness the lord protector of England, Scotland, Ireland, and *the dominions thereof*, and in his name only and no other." The commission further authorised them to appoint and hold courts of justice, and to proceed therein as near as might be to the laws of England, and "also that they summon an assembly, to begin on the 20th day of October, (then) next, for which assembly all such should be disabled to give any vote, or to be elected members thereof, as have borne arms in war against the parliament, or *do profess the Roman Catholic religion*." By the same commission Mr. William Durand was appointed secretary of the province, and captain John Smith, sheriff, of St. Mary's county; as we may suppose, though not so expressed. Annexed to the fore-

CHAPT.
VI.
1654.
The go-
vernment
vested in
captain
Fuller and
a council.

three counties, in the ratio of their burgesses, an effective militia of white men, above sixteen years of age, to the number of four hundred and twenty-five. If governor Stone, therefore, was under "fear of a party to come from Virginia," amounting to even three hundred militia, which was considerably more than all his own little army could have amounted to, it certainly was most prudent in him "to submit as he had once before done."

* It is probable, that all these gentlemen were Puritans, and most of them leading men of that party of them, who had settled at Ann Arundel. Captain Fuller was probably a *military* man, and might have been in the service of the Puritan army in England. We have seen him before, (p. 458,) appointed as the commander of some militia, who had been ordered to march against the Indians of the eastern shore, and we shall soon see him again as commander in chief of the Puritans in the decisive battle on the Severn between our contending provincial parties. Mr. Durand was the first *elder* elected by the Puritans on the Severn, when they first settled at Ann Arundel; and Mr. Edward Lloyd had been the first commander of Ann Arundel county, appointed by governor Stone after the organization of the county. Mr. Leonard Strong was subsequently the agent of the Maryland Puritans in England, where he wrote his before mentioned pamphlet, entitled, "Babylon's Fall in Maryland," &c.

CHAPT.
VI.

1654.

going commission, there appears on the present records a written order, signed by Bennett and Clayborne, and addressed to Mr. Thomas Hatton, the secretary of the province, appointed by lord Baltimore, as before stated, requiring him to deliver the records of the province and all the papers concerning the same unto Mr. William Durand.*

Thus we see, as is usual on all such revolutions, the victorious party carefully appropriating to themselves all the offices and emoluments, of which their opponents were possessed. This, from its general usage, might have been expected. But the ill-liberality, and indeed ingratitude, of these Puritans, on the present occasion, in respect to the disfranchisement of the Roman Catholics, as above stated, deserves the severest reprehension, and can admit of no palliation. When, through the imprudent liberality of lord Baltimore, in originally granting indulgence to every sect to settle within his province, and afterwards more particularly, through the special permission of his government at St. Mary's, in allowing these Puritans to form their settlements on the Severn in Maryland, after they had been driven out of Virginia, an asylum had been thus generously granted to them; that they should rise up against their benefactors, seize the reins of the government into their own hands, and then proscribe and interdict these very benefactors from all their political rights, and, as subsequently appears, cruelly *sequester* their property from them as *delinquents*, was such a shameful sacrifice of all *moral* feelings at the shrine of *religious* zeal, as cannot but cover their descendants in the province at this day with confusion and regret. Some apology, perhaps, may be made for them, by observing, that the instrument of government, by which Cromwell had been then lately installed "lord protector of England," &c., (on the 16th of December, 1653, as before stated,) contained (in the 14th, 15th, and 16th sections thereof,) similar disabilities imposed upon all those, "who had aided, advised, assisted, or abetted in any war against the parliament, since the first day of January, 1641; or who had advised, assisted, or abetted the rebellion of Ireland, as also on all such *who do or shall profess the Roman Catholic religion*." All such persons were thereby declared to be "disabled and incapable for ever to be elected, or give any vote in the election of any member to serve in parliament." It was therein further declared,—"that all votes and

* See note (LXXXIV.) at the end of this volume.

elections given or made contrary, or not according, to these qualifications, shall be null and void : and if any person, who is hereby made incapable, shall give his vote for election of members to serve in parliament, such person shall lose and forfeit one full year's value of his real estate and one full third part of his personal estate; one moiety thereof to the lord protector, and the other moiety to him or them who shall sue for the same."* Agreeably to this important clause of the constitution an order was given, at the time of issuing the writs of election,—“That no person, who had ever been against the parliament during the time of the civil war, *or the sons of any such persons*, should be capable of being chosen to sit in that parliament;”—nor were any such persons made choice of.† This severe proscription or disfranchisement of a very large portion of the people of Great Britain, and much more so of Ireland, seemed at this day to have been naturally congenial with the acknowledged arbitrary government of Cromwell. But, why should the petty Puritans of Maryland have followed the example? Gratitude ought to have whispered to them, that the readers of their history two hundred years afterwards would frown with indignation upon their conduct.

CHAPT.
VI.
1654.

Captain Fuller and his fellow commissioners, it seems, faithfully complied with their orders in summoning an assembly to meet on the 20th of October, as directed. On the meeting of the assembly on that day, at Patuxent, where it was held,‡ they appear to have sat together as forming only one *house*, and not as before, divided into two houses—upper and lower. Captain Fuller is enumerated, on the record of the “assembly proceedings,” at the head of a list of the members then “present.” Mr. Richard Preston, (who was next to captain Fuller in the preceding commission for the government,) is designated on the list as *speaker* of the assembly. The names of all the other commissioners for the government, appointed with captain Fuller, in the preceding commission, appear also in the list of members

An assembly called, which meet.

* Copies of this important political instrument or form of government seem to be scarce. It is inserted in none of the Histories of England, in use at the present day, except by *Tindal*, in his Appendix to Rapin's Hist. of England.

† Clarendon's Hist. (folio edit.) p. 647.—Rapin's Hist. (Tindal's edit.) vol. 11, p. 84.

‡ As it appears from subsequent documents, that the records of the province, delivered up by Mr. Hatton to Mr. Durand, were by the latter deposited and kept at the house of Mr. Preston “at Patuxent,” we may infer, that the Puritans had now fixed upon that place as the seat of government, and that this assembly was held at the house of Mr. Preston. But, where Mr. Preston's house was situated, or on which side of the Patuxent it was, we are not enabled to determine,

CHAPT. "present;" together with the names of seven others not in the
 VI. preceding commission; making in all sixteen members, including captain Fuller and Mr. Preston the speaker. It appears
 1654. from one of the acts of this session, that Mr. Thomas Hatton, the former secretary, and Mr. Job Chandler a former councillor, had been chosen burgesses to this assembly "for the county of St. Mary's and Patowmack river," and had been so returned by the sheriff. They appeared in the house accordingly, but "declared before the assembly, that they refused to sit and act as burgesses, in respect that they, the said Thomas Hatton and Job Chandler, had taken an oath to the lord Baltimore, and for other reasons expressed in a writing by them subscribed and left with the secretary." The assembly, on this declaration, made an *order*, "that a new writ for a second choice of burgesses for the limit aforesaid should be issued to give power to the sheriff for a new election of burgesses to supply the default and *delinquency* of the said Thomas Hatton and Job Chandler; and accordingly the sheriff returned Mr. Arthur Turner and Mr. John Wade chosen burgesses by the *unanimous* consent of the freemen inhabiting the said county of Saint Mary's and Patowmack; and the said Mr. Arthur Turner and Mr. John Wade appeared and freely offered themselves to the service of the commonwealth in this province, and were approved members qualified for that end.

It will be recollected, that the commission to captain Fuller and others, for the government of the province, just stated, directed, that "all such should be disabled to give any vote or to be elected members thereof," that is, of the assembly to be held on the 20th of October, "as had borne arms in war against the parliament, or professed the "Roman Catholic religion." As the majority of the inhabitants of St. Mary's county were at this time undoubtedly of the Roman Catholic religion, they were by this clause disfranchised of their political rights, either of voting or being voted for. We have before stated our supposition, that the *Protestants*, to whom lord Baltimore had entrusted the administration of his government of the province, to wit, governor Stone, Mr. Secretary Hatton, and the several councillors, whom he had appointed, were not *Puritans*, but most probably, (as may indeed be strongly inferred from this violent opposition of the *Puritans* on the Severn against their administration,) Protestants of the old church of England. It is probable also, that the few Protestants of St. Mary's, besides those to whom the govern-

ment had been thus entrusted, were, for the most part, of the same old church also. It would then have been natural, that such men as Mr. Hatton and Mr. Chandler, formerly the principal officers of the proprietary government, should have been the objects of their choice. Under all these circumstances it becomes difficult to reconcile with the truth of facts the foregoing expression in the record just quoted; to wit, that "Mr. Arthur Turner and Mr. John Wade were chosen burgesses by the *unanimous consent of the freemen* inhabiting the said county."* We fear, that such a choice of burgesses savoured too strongly of our elections in modern times; in which the choice being made and dictated by a *few* leaders in *caucus* assembled, the *many*, who were entitled to vote, had really and truly nothing to say upon the subject, except to do as they were bid.

Mr. Hatton and Mr. Chandler, however, were not to be let off on this occasion by the assembly so lightly as they might have expected. A new election had been attended with some expense chargeable to the county. If these two gentlemen had informed their electors, previous to their election, that they could not serve in the assembly, if elected, such expense would then have become justly chargeable on the county; but, if they had neglected so to do, it was considered as their default, and, in the opinion of the assembly, they were liable to the charges and expenses of such new election. This is to be inferred from the following order of the assembly passed towards the latter end of the session:—

"It is ordered by the assembly, that, whereas some charge hath been brought to this house by the sheriff, occasioned by the default of the burgesses of the county of St. Mary's and Patowmack, viz. Mr. Thomas Hatton and Mr. Job Chandler, so that there was a necessity of proceeding to a new election, that this charge cannot be levied on the whole,† but there where the default was made, that is, on the county of St. Mary's and Patowmack, and if the fault appears not to be in the electors, but in the said Hatton and Chandler, then the said county hath liberty granted to recover the charge on the *delinquents*."

The first proceeding of this assembly, after being thus organized, was, as generally occurs on all revolutions, the ratification

Their proceedings.

* Upon the same grounds we may ascertain, how much credit is due to Mr. Strong's assertion, before quoted, from his pamphlet entitled "Babylon's Fall," &c.—wherein he says, that "at this assembly there was a full and lawful representative of the whole province."

† That is, "on the whole" province.

CHAPT. of their own assumed powers. For this purpose they passed
 VI. and enacted, what was entitled "the act of recognition." For
 1654. the title of this act, that of the assembly of 1650, for the "recognition" of lord Baltimore's authority within the province, herein before stated, seems to have afforded a precedent; but, these acts do not appear to have been founded upon analogous causes, inasmuch as lord Baltimore's authority over the province does not appear to have been ever superceded by any other ostensible government, although a rebellion against his government had certainly existed. This present "act of recognition" seems to have been founded merely on *revolutionary* principles.

"It is enacted and declared in the name of his highness the lord protector of England, Scotland, and Ireland, and *the dominions thereunto belonging*, and by the authority of this present general assembly, that the reducing of this province of Maryland by power of the supream authority of the commonwealth of England, committed to Richard Bennett, esq., and colonel William Clayborne, and the government as it is now settled by commission granted to captain William Fuller, Mr. Richard Preston, Mr. Wm. Durand, Mr. Edward Lloyd, Mr. Leonard Stronge, Mr. John Hatch, Mr. John Lawson, Mr. Richard Wells, Mr. William Parker, Mr. Richard Ewen, is acknowledged by this assembly, and freely and fully submitted unto, and that no power, either from the lord Baltimore or any other, ought or shall make any alteration in the government aforesaid as it is now settled, unless it be from the supream authority of the commonwealth of England exercised by his highness the lord protector immediately and directly granted for that purpose; that, after publication of this act, all the inhabitants of this province are required to declare in particular and express terms, under their hands, their owning and accepting of the present government and subjection thereunto; that all such person or persons as deny the present government, or do, either in word or deed, vilify or scandalise the same, or, by actions secret or open, disquiet, oppose, [or] disturb the same government, shall be accounted offenders against the lord protector of the commonwealth of England, the peace and welfare of this province, and dealt with according to their offence.

"That no commission or power shall be owned or received in this province other than that which is already settled therein, but that which is the supream authority of the commonwealth of

England shall immediately and directly grant and confirm; and whosoever shall publish any commission, proclamation, order or declaration, writ or summons, which is not from the supreme authority, so granted as aforesaid, shall be accounted an offender against the public peace and welfare of this province, and dealt with accordingly.”*

Having thus provided for the security of the government, as established by them, they then proceed to a declaration (in the form of another act,) of some of the rights of their subjects, the inhabitants of the province; shortly expressing themselves thus:

“It is the mind of this assembly, that any free subject of the commonwealth shall have free liberty, not only by petition to seek redress of grievances, but also *to propound things necessary for the public good*, provided that it be orderly done.”

The latter part of this declaration most probably had a reference to the old former disputes, which had taken place between the lord proprietary and the provincial assemblies, in respect to the right, claimed by him, of initiating or propounding laws to be enacted by those assemblies. This right seems, however, to have been here strangely reversed. Of the right of the lord proprietary to propound laws to the assembly, he being a branch or constituent part of the government, some question might arise; but, that every subject or inhabitant of the province should have this right, could be reconciled only by the paucity of those inhabitants. The policy of the measure might be tested by suggesting the adoption of it by congress or any of the state legislatures. What an inundation of business they would soon have on their hands!

Next to their civil and political rights, those of religion seem to have attracted the attention of this assembly. The follow-

* Chalmers, (in his *Annals*, p. 223,) has stated, in reference to this act, that “the assembly naturally passed, in the first place, an act of recognition of *Cromwell’s just title and authority; because from him it had devised its present power.*” But, it is evident, from a perusal of the foregoing act, that it was not intended merely as a recognition of Cromwell’s title or authority, but principally of their own. Neither does it appear from this act, that the commissioners—Bennett and Clayborne had their “present power” from Cromwell for their proceedings in this their second “reducement” of Maryland, but acted only under their former commission of 1651, in which Curtis was included. Mr. Chalmers was most probably misled by inspecting only the *title* of the act, as it is in Bacon’s Collection of the Laws of Maryland. Not having the whole of the act before him, he supposed, from the *title*, that it was a “recognition” of Cromwell’s authority; which, indeed, stood in no need of any colonial bolstering.

CHAPT. VI.
1654. ing law, enacted by these Puritans at the present session, delineates their character, as to religious toleration, more than volumes, which have been written on the subject. We have before stated this act of assembly,* to shew the comparative disposition of the different sects of religion, then contending for the supreme power within the British dominions, to indulge their opponents in the exercise of their religious opinions, and and have there hazarded the assertion, that neither the Roman Catholics nor the Puritans, although contending for what they called—religious liberty, had the slightest idea of ever granting that liberty to others, should they ever obtain the mastery of affairs. With respect to the latter this act affords abundant proof.

“An act concerning religion.

“It is hereby enacted and declared, that none who profess and exercise the *Popish* (commonly called the *Roman Catholic*) religion, can be protected in this province, by the laws of *England* formerly established, and yet unrepealed: Nor by the government of the commonwealth of England, &c., but to be restrained from the exercise thereof. That such as profess faith in God by Jesus Christ, though differing in judgment from the doctrine, worship, or discipline, publicly held forth, shall not be restrained from, but protected in, the profession of the faith and exercise of their religion; so as they abuse not this liberty to the injury of others or disturbance of the peace on their parts. Provided, such liberty be not extended to *Popery* or *prelacy*, nor to such, as under the profession of Christ, hold forth, and practise licentiousness.”

The prior part of this act, (as far as the words—“exercise thereof,”) which may be termed the *disabling* clause of the act, was in conformity to that part of the new form of government for England, before referred to, which imposed similar disabilities. The latter part or remainder of this act, which may be termed the *enabling* or tolerating clause, was a literal transcript of the XXXVII. section of the same instrument of government. Our Puritans, perhaps, may be said, therefore, to have been in some measure excused for following so closely the example of the mother country; but, it must be recollected, that circumstances had placed them, in relation to the proprietary government of Maryland, in a peculiar situation. There is a *gratitude* due

* In the Introduction to this history already published, p. 195.

to governments, or to those who administer them, which sometimes places a set of individuals somewhat under the same moral obligation as an individual receiving a favour from the hand of a private person. It becomes a small abridgment of the full exercise of a power, which they might otherwise wield to its full extent.

In further conformity to the form of government, recently established in England, our colonial Puritan assembly now made an act also for "assemblies every three years." This must have meant, as it then did in England, that there should be a new election of members "every three years," but to hold their sessions as often as convenient or requisite.

Agreeably to the ostensible morality generally held out by the Puritans, they did not omit, at this session also, to make several provisions by different acts to enforce the obligation and observance of moral principles and duties. For this purpose they passed several distinct acts,—“concerning drunkenness;”—concerning swearing;—concerning false reports, slandering, and tale bearing;—concerning the Sabbath-day;—and concerning adultery and fornication.”† Laws against these offences had been passed at former sessions of assembly, but perhaps not so as to suit exactly the temper of the present rulers. Upon the same principle they appear to have travelled over much of the same ground of legislation as had been provided for by their predecessors; particularly in relation to the Indians; to wit, against the “stealing of Indians;‡—selling of guns, powder, or shot to

* By the second section of this act,—“Every person, *who should see any one drunk*, and should not, within three days, make it known to the next magistrate, should be liable to the fine of 100 lb. tobacco.” This fine was the same as had been imposed on the principal offender by the first section. What an *espionage* would such a law introduce among our grog-drinkers at this day!

† The punishment for these two last mentioned offences—adultery and fornication, was such “as the commissioners authorized thereunto” (that is, the justices of the court,) should adjudge and determine, *not extending to life or member.*” The assembly here deserve some credit in not extending their punishment for these offences quite so far as their sister colony of Massachusetts, as well as the parliament of the mother country, had previously done, by making these offences punishable with *death*. See before, p. 427.

‡ This act made the stealing and selling, or transportation of any *friend* Indian *punishable with death*, as a former act of 1649 had done. Although it cannot be inferred from this act, that the *slavery* of Indians was then held lawful, yet from other acts of assembly before mentioned, (see p. 359,) it would seem to have been sometimes practised by some of the inhabitants of the province. The same inference may be made from an act of assembly of *Virginia* in this year, in which, to induce the Indians to trust their children with the whites to learn *trades*, the assembly “engaged that they shall not be used as *slaves*.” Burk’s Hist. of Virg. vol. ii. p. 103.

CHAPT. VI. the Indians;—delivering of guns to them;—and concerning the
 VI. trespasses of Indians;—or a war with them;—and of treating
 1654. with them.” It was also thought proper at this session to repeal the former act of 1650, whereby the settlement of Providence on the Severn had been erected into a county under the name of Ann Arundel, so far as to direct “that the county now called Ann Arundel county should be called and recorded by the name of the county of Providence, this being the first name by which it was known; the bounds thereof to be Herring creek, including all the plantations and lands unto the bounds of *Patuxent* county, that is, to a creek called Mr. Marshe’s creek, otherwise called Oyster creek.” *Patuxent* county was erected by another distinct act of this session, and appears to have been the same as that before erected by an order of governor Stone, (July 3d, of this year,) under the name of Calvert county.*

The laws of this session being numerous, (amounting to forty six in number,) and most of those, not before mentioned, appearing to be but repetitions of former acts, they must be here omitted, with the exception of two; which, relating to the old stumbling block of the Puritans—the oath of fidelity to lord Baltimore, as being the indispensable preliminary to “rights of lands,” cannot with propriety be passed over without some notice. The former act, entitled, “an act concerning rights of lands,” was intended to counteract the proceedings of lord Baltimore and his government here, in refusing patents without the previous oath of fidelity, with the reasons of the assembly for the same.

“An act concerning rights of land.”

“The assembly perceiving by the conditions of plantation which are imposed upon the inhabitants of this province of the lord Baltimore, and by his proclamation directed to his officers here, that none can hold any land of his lordship without violation of the liberty of his conscience, which he binds to take an oath inconsistent with the laws of England now in force and published, and so contrary to their engagement to his highness the lord protector, and the commonwealth of England;† and all those, that do not take such an oath, shall lose all their lands, as seized for his lordship’s use; the execution whereof efficaciously to be performed, he requireth and chargeth his officers in his

* See before, p. 499.

† The unreasonable grounds of this objection to the oath of fidelity to his lordship will appear, by referring back to p. 404 and 474, 475.

own name to attend unto. The assembly cannot see how they, CHAPT.
VI.
1654. that have rights to land, can, without collusion and deceit to him and themselves, apply themselves for rights of land to the said lord Baltimore or his officers; that *all those, that transport themselves or others into this province, have a right to land by virtue of their transportation*; that every one may enter their rights of land in their several respective courts, and also may enter a *caveat* for such a particular tract of land as they have or shall take up."

Although this act does not expressly say, that the party, so taking up land "by virtue of his transportation," should have and enjoy an estate in fee simple in his land, as fully and absolutely as if a patent from his lordship had been granted for the same, (as a subsequent act of assembly did, on a similar occasion,*) yet it seems evident, that the provision for the entry of a *caveat*, (which must have been to prevent any other person from taking up the same land,) would have an operation similar to the more express words of the subsequent act. Although the oath of fidelity, by a subsequent agreement, in behalf of lord Baltimore, in March 1657-8, was not to be pressed in future upon the residents of the province, and instead thereof a certain *engagement*, as therein prescribed, was to be taken by those who would obtain grants of their lands, as will presently be seen, yet the notice of this act herein may be of use, in accounting for the want of a patent for such lands as may have been taken up in the intermediate space of time.

The other act of this session, just referred to, relates to the same subject, but seems to be in the nature of a *declaration* against the proclamation of governor Stone, of the 7th of February, 1653-4, herein before stated.†

"Whereas by a proclamation, published and recorded in this province, by special order and command from the lord Baltimore, all the inhabitants, that will not within three months take that oath, which is imposed by his lordship, requiring them to acknowledge him to be *an absolute lord* of this province, and to

* When the government of the province, soon after the English revolution, was taken out of the hands of lord Baltimore, in 1692, in resentment thereof he shut up his land office, and would grant no patents. To remedy this, the assembly of that year passed the act entitled, "an act for securing the rights of several persons;" by virtue of which those, who had obtained warrants which were executed, were to enjoy them in fee simple without a patent. See the act at large in Bacon's Collection of the laws, 1692, ch. VIII.

† See before, in this chapter, p. 473.

CHAPT. have royal jurisdiction here, shall have their lands seized to his
 VI. said lordship's use; and whereas likewise the said lord Balti-
 1654. more hath declared such as have not or shall not comply with
 his government to be rebels, which also is upon record; this as-
 sembly doth declare, that the said proclamation and declaration
 aforesaid made by the said lord Baltimore and recorded, is null
 and void, and of none effect to such intents and actions as are
 mentioned therein; and that act of recognition confirmed by the
 assembly and expressed in the act is firm against all or any such
 declaration."

After this declaration, the assembly appear to have concluded
 their busy session with the following "order," which does them
 much honour, as indicating, that, although they were bereft of
 gratitude, yet they had not abandoned all sense of justice.

"Order, that no suits commenced before the reduction of this
 province to the obedience of the commonwealth, shall receive
 damage by such alteration."

The cancelling of debts has sometimes operated as a spur to
 the zeal of revolutionists. Many of the leaders of even the
 American revolution have been accused, not without some plau-
 sible grounds of having been under the influence of such a mo-
 tive. Our Puritan revolution in Maryland, however, seems to
 have been clear of any such foul stain.*

1655.
 Governor
 Stone re-
 assumes
 his office
 and powers
 as gover-
 nor.

Our provincial records do not afford us any further information
 of the affairs of the province during the remainder of the year
 1654, and it is expressly stated by a cotemporary author, that
 "after this assembly," (to wit, of October, 1654,) "the province
 was quiet, and so continued until the latter end of *January*;
 about which time, the ship *Golden Fortune*, whereof captain *Til-*
man was commander, arrived in Maryland."† By this ship,
 captain Stone received, (through the information of a gentleman
 of the name of *Eltonhead*, who, as may be inferred from con-
 comitant circumstances, came as a passenger in the same ship,
 and was probably sent into the country by lord Baltimore,) in-
 telligence, "that the lord Baltimore kept his patent, and that his
 highness, (the lord proprietor) had neither taken the lord Balti-
 more's patent from him nor his land."‡

* Such of the acts of this preceding session, as have been herein above stated,
 were taken from the book in the council chamber, entitled "Assembly Proceed-
 ings from 1637 to 1658," p. 439 to 474.

† Leonard Strong's pamphlet, entitled, "Babylon's Fall in Maryland," &c.

‡ Dr. Barber's letter inserted in *Langford's* "Refutation of Babylon's Fall, &c.
 and at the end of this volume in note (LXXXV.)

It would seem also, that a *letter* or written *instructions* came also by this ship to governor Stone from the lord Baltimore himself. But, as they are not now extant, their contents cannot be here stated with certainty. It appears, however, that the "letter" alluded to by the agents of Virginia, (Bennett and Matthews,) in the state-paper, presented to them by the lord protector in 1656, entitled, "*A breviat of the proceedings of the lord Baltimore and his officers, &c., in Maryland,*" &c., was most probably now received by captain Stone. In this paper, it is stated, that—"The lord Baltimore in his last *letter* to captain Stone doth blame him for resigning up his government into the hands of the lord protector and commonwealth of England, without striking one stroke;" (alluding evidently to the resignation of the government of the province by captain Stone in July last,) "taxing him in effect with cowardice, that having so many men in arms, he would not oppose, saying, that Bennett and Clayborne durst as well have been hanged, as have opposed; or to that effect."* In either "paper relating to Maryland," of the same year, these agents seem to refer more expressly to some *instructions*, now received by captain Stone from lord Baltimore, as the operating inducements with the former to make some endeavours to recover back the proprietary government. They say,—“Concerning the late insurrection and blood spilt on the 25th of March, 1655, it appears, and *hath been proved*, that captain Stone being reproved by the lord Baltimore for resigning without striking a stroke, having so many in arms, and the commission given to captain Barber to reduce the people to lord Baltimore, in case captain Stone would not, the said captain Stone was hereby stirred and induced to attempt the said insurrection and rebellion.”† Thus encouraged and instigated by the lord proprietary, as the case might have been, to attempt the recovery of the proprietary government, captain Stone now reassumed

* If lord Baltimore was a royalist at this time and a friend to the restoration of Charles the second, of which no evidence appears, he might have been induced to write in this tone to his governor of Maryland by the extraordinary hopes, which the cavaliers or true friends of Charles entertained soon after Cromwell's usurpation of the protectorate, from the uncommon enmity, which that usurpation apparently excited among all the parties against Cromwell. Hence, the "rising" in the west of England by the unfortunate colonel Penruddock and others in 1655. So lord Baltimore might have supposed, that now also was the time for him to regain his government of the province.

† See these two papers, in note (LXXXVIII) at the end of this volume.

CHAPT. his office of governor, acting as is said, "under his former com-
VI. mission."*

1655.
Organizes
a military
force.

In virtue of his official authority, governor Stone proceeded to issue military commissions to officers, and to organize an armed force in the county of St. Mary's, for the purpose of taking possession of the government. Of these he dispatched a party to the house of Mr. Richard Preston, situated on or near the river Patuxent, where the provincial records had been deposited on the revolution in July last, as before stated, and caused them to be seized and brought to St. Mary's.† On the information of this seizure of the records, arriving at Providence, (now Annapolis,) captain Fuller and his council, in whom the government of the province had been vested, as before stated, sent two messengers with letters to captain Stone, "in a way of peace and love," desiring him to make it known by what power he surprised the records, and desiring an answer thereto. Captain Stone, it seems, thought it proper to return only a verbal answer, to wit, that "he would shew no power; but, he affirmed,

* Dr. Barber's letter, in note (LXXXV.) at the end of this volume.

† The above statement seems to be the *substance* of what is said on this subject by Mr. Leonard Strong, in his *Babylon's Fall*," &c. But, although his pamphlet is evidently the ebullition of strong party prejudice, yet the reader's curiosity may perhaps receive some gratification by the writer's own words. "Then (that is, on the arrival of the news by the *Golden Fortune*,) the lord Baltimore's officers, and the *popish* party began to divulge abroad, and boast much of power, which came in that ship from his highness the lord protector, to confirm the lord Baltimore's patent to him, and to re-establish his officers in their former places under him; which pretended power they assumed to themselves; captain Stone and the rest giving out threatening speeches, That now the rebels at *Patuxent* and *Severne* should know that he was governor again; giving order, That neither act of the said assembly should be observed, nor writ from the power established by the commissioners aforesaid obeyed,"—(to wit, writs in the name of captain Fuller and others, to whom Bennett and Clayborne had committed the powers of government, as before cited,) "but what should issue forth in the name of the lord proprietary, viz. lord Baltimore. And further, the said captain Stone gave several commissions to the *papists* and other desperate and bloody fellows, to muster and raise men in arms to be ready upon all occasions, giving out that he would go to *Patuxent* and seize the records of the province at the place where they were appointed to be kept by an act of the assembly, and to apprehend Mr. *Richard Preston* also, at whose house they were; which shortly was effected by virtue of a warrant in captain *Stone's* name, without proclaiming or shewing any power by which he acted such high robberies. But in threatening speeches declared, that they would have the government; and for the terror of others, would hang some of the commissioners, which were entrusted with the government by the commissioners of the commonwealth of *England*, under his highness the lord protector, namely captain William Fuller, Mr. Richard Preston, and Mr. William Durand."

that he acted by a power from lord Baltimore; and that the lord protector had confirmed the lord Baltimore's power." The messengers were thereupon dismissed and went home.* Soon after this, governor Stone issued a proclamation, for the purpose, as it would appear, of quieting the minds of the people of Patuxent, on his reassuming the government of the province, and his seizure of the records, protesting therein, that it was not his intention to use any hostile proceedings either against them or the people at Providence.† As Mr. Preston's house on the Patuxent had been used, since July last, as the seat of government for the province, where the provincial records had been kept, a considerable quantity of *arms and ammunition*, as it appears, had been there also deposited. Governor Stone, as a further precautionary measure, thought it proper to secure these arms and ammunition, and accordingly sent an armed party of twenty men for that purpose, under the command of William Eltonhead and Josias Fendal. They seized upon such arms, &c., as they could find, not only in Preston's house,‡ but in others in the neighbourhood, which, it is stated, they searched; and brought the

CHAPT.
VI.
1655.

* The words of Mr. Strong, in his "Babylon's Fall," &c., may again be quoted:—"About this time," (that is, on the seizure of the records,) "captain William Fuller, Mr. William Durand, Mr. Leonard Strong," (the author himself,) "and Mr. Richard Ewen, to whom among others the government was committed, sent two messengers of quality and trust with letters to captain Stone, in a way of peace and love; desiring him to make it known by what power he surprised the records; and desiring him, the said captain Stone, to give an answer, as by the letter, relation thereunto being had, more at large appeareth: But the said captain Stone, instead of giving a satisfactory answer, imprisoned the messengers, and, in much wrath and fury, said he would shew no power: at last he affirmed, that he acted by a power from lord Baltimore; and that the lord protector had confirmed the lord Baltimore's power. If so, sir, said one of the messengers, if it be confirmed, let that appear, and it will satisfie. Confirmed, said captain Stone, I'll confirm it; and so sent them home." This wears very much the appearance of a prejudiced and coloured statement, and, therefore, has been followed above with caution. It is probable, that the messengers were put under some restraint, and prevented from mixing with the people of St. Mary's, and from prying into the proceedings of the proprietary government, and for that purpose might have been put under confinement for the time they staid at St. Mary's. The letter from captain Fuller and his council to governor Stone, above referred to, does not appear to be now extant.

† This proclamation does not appear to be now extant, but is so stated as above by Mr. Strong.

‡ Mr. Strong's words are,—“They beset and entered the house of Mr. Richard Preston, with intent to surprise him; but not finding him at home, took away in guns, swords, and ammunition to the value of £30 sterling; ransacked every place in and about the house, to seek for the said Richard Preston; and, as some of the company then said, with purpose to hang him for his rebellion against the lord Baltimore.”

CHAPT. VI. same to St. Mary's, carrying with them Mr. John Sutton, who had been appointed deputy clerk, "to attend the records, for any that should have occasion to use them, either for search or copy;" as also lieutenant Peter Johnson. These were detained prisoners, as is alleged, for about twenty days.

And
marches
towards
the Severn.

Soon after these transactions, governor Stone began to make preparations for reducing the Puritans of Ann Arundel to a submission and obedience to lord Baltimore's government. Having collected together and armed about two hundred of the yeomanry of St. Mary's county, who were willing to follow him, he set out with this his little army, about the twentieth of March, 1654, O. S., towards Providence, now Ann Arundel. He had collected also about eleven or twelve vessels, probably such as are now called *bay-craft*, for the transportation of some of his forces, part of them marching along the bay coast, and the vessels serving to ferry them across the mouths of the rivers.

Before they had arrived at Herring creek, (sometimes called Herring bay,) in Ann Arundel county, they were met by messengers in a boat, who had been sent by the government at Providence with a letter to captain Stone, remonstrating against his proceedings, and desiring to be informed, not only of his authority and power in so doing, but whether "he were resolved to come to no parley or treaty, protesting in the said writing, that by the help of God, they were resolved to commit themselves into the hand of God, and rather die like men, than live like slaves."* No answer to this message appears to have been given by governor Stone; as may be inferred from the circumstance, stated by the same author, that "these messengers were apprehended, and their boat seized;" but three, out of the six persons on board the boat, contrived to make their escape, and carried back to the government at Providence the intelligence, that captain Stone and his army were on their march towards them in hostile array. On the arrival of governor Stone and his army at *Herring creek*, they found there, it seems, one of the commissioners, to whom the government had been entrusted in July last by Bennett and Clayborne. This gentleman they caused to be kept under guard or in custody;† and either at this

* Strong's "Babylon's Fall," &c.

†Mr. Strong's account on this occasion is, as follows:—"Captain Stone and his company still drew nearer to Providence, unto a place called Herring creek, where they apprehended one of the commissioners, and forced another *man of quality* to flee for his life, having threatened to hang him up at his own door;

CHAPT.
VI.
1655.

place or at a little further on his march, governor Stone deputed doctor *Luke Barber* and Mr. Coursey, to go on before them to Providence with a *proclamation*, (or *declaration*, as doctor Barber calls it,) addressed to the people of Ann Arundel. It may be proper here to premise, that this gentleman—doctor *Barber* appears to be the same person alluded to in the “paper relating to Maryland,” just before stated, under the denomination of captain Barber, who is said to have had “a commission to reduce the people to the lord Baltimore, in case captain Stone would not.” No mention of such a commission, in his letter to the lord protector, is made by him, and the fact, therefore, seems questionable. He appears, however, to have been a zealous friend of lord Baltimore, and had arrived in Maryland about the twentieth of March, 1654–5, when the governor, captain Stone, as he says, was “ready to march with his army.” From his own statement, it appears, that he was induced to accompany the governor on his march, only on the particular request of the latter, and, therefore, being a *neutral* person, and in the confidence of the lord protector, he was the more fit to be sent as a peace maker between the contending parties. Of the contents of the proclamation, thus sent by doctor Barber, we are uninformed, it not being now extant; except so much of it as is stated by doctor Barber, in his letter to the lord protector, wherein he says, that “in the end of this *declaration* the governor did protest, as in the presence of Almighty God, that he came not in a hostile way to do them any hurt, but sought all meanes possible to reclaime them by faire meanes; and to my knowledge,” (doctor Barber adds,) “at the sending out of parties, (as occasion served,) he gave strict command, that if they met any of the *Ann Arundel* men, they should not fire the first gun, nor upon paine of death plunder any: these were his actings to my knowledge upon the march.” The “*declaration*,” however, does

and, not finding the man, affrighted his wife, and plundered the house of ammunition and provision, threatening still what they would do to the people at *Providence*, and that they would force the rebellious factious *Roundheads* to submit; and then they would shew their power.” The “commissioner,” here alluded to, whom they found at Herring bay, must have been one of those, whose names have been herein before stated, (p. 505,) composing captain Fuller’s council. It is possible, that this “commissioner” might have been at Herring bay on a visit to the “man of quality” mentioned, whom we may suppose to have resided there; both of them, as we may infer, being hostile to governor Stone and his proceedings, and the “commissioner” sent forward by captain Fuller to explore and make report of governor Stone’s advance.

CHAPT. VI. not appear to have had any salutary effect ; for, according to the
 1655. cotemporary author, before cited, who was probably present at the transaction,* the two gentlemen messengers, (doctor Barber and Mr. Coursey,) were permitted to *read* the “declaration,” (or proclamation,) “but having no other treaty to offer, they were quietly dismissed to their own company, to whom they might have gone if they would.” It seems, however, that they did not return to governor Stone, and his army ; nor did another messenger, (Mr. Packer,) dispatched by governor Stone, on the next day after the others, upon a similar errand as we may suppose.† It is possible, that the rapid advance of the army to the harbour of Providence might have precluded the necessity of it ; for, on the evening of the same day, on which the last messenger arrived, “captain Stone and his army appeared in the river of *Severn* at Providence, with eleven or twelve vessels greater and lesser, in which their whole army were wafted.”‡ On the appearance of this fleet and army, captain Fuller called a council of war ; at which Mr. William Durand, the secretary of the Puritan government at Providence, was appointed to go on board a merchant ship, called the *Golden Lyon*, then lying at anchor in the river, of which one *Heamans* was master. Mr. Durand was directed to affix a proclamation on the main mast of the said ship, directed to captain *Heamans*, commander thereof ; in which proclamation, “he, (the said *Heamans*,) was *required*, in the name of the lord protector and commonwealth of England, and for the maintenance of the just liberties, lives, and estates of the free subjects thereof, against an unjust power, to be aiding and assisting in this service.” On this statement our cotemporary author§ remarks :—“The said captain *Heamans* at first was unwilling ; but afterwards seeing the equity of the cause and the groundless proceedings of the enemy, he offered himself, ship, and men for that service, to be directed by the said William Durand.”

When we advert to other information relative to the conduct of captain *Heamans*, we cannot but be struck with the strong probability, that all this proceeding of deputing Mr. Durand to go on board the *Golden Lyon*, and the fixing a proclamation on

* Leonard Strong, in his “*Babylon’s Fall*,” &c.—Mr. Strong was then one of captain Fuller’s council.

† Mrs. Stone’s letter, hereafter referred to.

‡ Leonard Strong’s “*Babylon’s Fall*,” &c.

§ Leonard Strong, *ibid.*

the main mast thereof, for the purpose before expressed, was a mere pretext, before concerted between captain Heamans and the Puritans, to gloss over his interference, and to make it appear as if he had been *impressed* into the Puritan service. Doctor Barber, in his letter to the lord protector, expressly states, that "*Heamans*, commander of the *Golden Lyon*, was *hired* by them," (that is, by the Puritan government at Providence,) "having since received his reward of them;" and Mrs. Stone also, in her letter to lord Baltimore, states, that "they were better provided than her husband expected; for, they *hired* the captain of the *Golden Lyon*, a great ship of burden; the captain's name is Roger Heamans, a young man, and his brother, who have been great sticklers in the business, as I hear."* Mr. Heamans, therefore, must have been a *volunteer* in the contest, and was probably a zealous Puritan.

Governor Stone, with his little fleet and army, had, by this time, about "the shutting in of the evening," as it is said, on the 24th of March, (O. S.) arrived within the outer harbour of Providence, now Annapolis. He was now also within the range of the shot of the *Golden Lyon*; from whence a gun was fired at him, in order, as is said, to bring him or some messenger on board. Governor Stone did not think it proper to pay any attention to this signal of war, as it appeared; but, having arrived within the mouth of the creek, which forms the southern boundary of the peninsula on which the city of Annapolis now stands, proceeded to land his men on a peninsula or point of land, which lies on the southern side of both the river Severn and the before mentioned creek, nearly opposite to and in an eastern direction from what is called the *dock* or inner harbour of Annapolis, and on which point or peninsula a small fortress, called fort *Horn*, was afterwards built during the American revolutionary war. While governor Stone was landing his men on this point of land or peninsula, the commander Heamans, or Mr. Durand, thought it proper to repeat their fire upon the boats of governor Stone as they were rowing to the shore. The shot thereof lighting somewhat near to them, the governor deemed it most prudent to send a messenger on board the *Golden Lyon* to know the reason of their conduct, with directions to the messenger to inform the captain of the ship, that he (governor Stone) thought "the captain of the ship *had been satisfied*." To which the captain "an-

CHAPT.
VI.
1655.

* Mrs. Stone's letter, in note (LXXXV.) at the end of this volume.

CHAPT. swered," (in a very blustering tone, as it appears,) "satisfied
 VI. with what?—I never saw any power captain Stone had, to do as
 1655. he hath done; but the superscription of a letter. I must, and
 will appear for these in a good cause."*

The battle
 on the
 Severn.

Governor Stone having moved his vessels further up the before mentioned creek during the night, captain Heamans, or the Puritans on shore, contrived, early in the next morning, to place a vessel or vessels, "with two pieces of ordnance," at the mouth of the creek, and by that means blockaded governor Stone's little fleet within the same, so as to prevent them from coming out. The governor soon after, however, on the same day, (being *Sunday*, the 25th of March, 1654–5, O. S.) appeared with his small army, in military parade, on a narrow neck of land, (most probably that, on which the remains of the before mentioned *fort* now are,) near where he had landed. The captain of the ship, (Heamans,) observing this, brought his guns to bear upon them, and firing at them, *killed one man*, and by that means forced them to march further off into the neck of land.† In the mean time captain Fuller, the Puritan commander, with his army consisting of a hundred and twenty men, embarked on board of their boats, most probably from the peninsula whereon Annapolis now stands, and went up the river some distance, where they landed and marched round the head of the creek to where captain

* This is so stated by Mr. Leonard Strong, (in his "Babylon's Fall," &c.) who most probably was in Annapolis at the time. But he has no where, in his pamphlet, previously mentioned any prior eclaircissement or explanation, which might have taken place between governor Stone and the captain, after the arrival of the former with his fleet within the Severn, to which the "satisfaction" mentioned seems to allude. Nor does doctor Barber or Mrs. Stone, in either of their letters, hint at any such previous *explanation*. It is probable, however, from the above, as stated by Mr. Strong, that governor Stone and captain Heamans had some *explanation* with each other previous to the firing on the boats, and that governor Stone had exhibited to him some letter or instructions, which he had lately received from lord Baltimore.

† Mr. Strong's words are:—"The same day, being the first day of the week, and the 25th of March, the enemy appeared in a body upon a narrow neck of the land, near their vessels, and with drums and shoutings said, *come, ye rogues, come, ye rogues, round headed dogs*; which caused the captain of the ship to give fire at them, and forced them to march further off, into the neck of land." Doctor Barber, however, states, that, "in firing upon them *in the next morning*, as he was credibly informed, they killed one of the governor's men, and so began the war, which after fell out." Mrs. Stone also, in her letter to lord Baltimore from St. Mary's, states as follows:—"The gunner's mate of *Heamans*, since his coming down from Ann Arundel to Patuxent, hath boasted that *he* shot the first man that was shot of our party." It was, therefore, most probable, that at the firing from the ship *in the morning*, as just stated by Mr. Strong, *the first man was killed* of either side.

Stone and his people were waiting to receive them, a distance of six miles, as is stated by our author. On the approach of the Puritan army, the sentry of the people of St. Mary's, or *Marylanders*, as our author calls them, fired his alarm gun, when the *Marylanders* immediately appeared in order. As we have no other authority for the minutiae of this battle, than the account of it given by the author just quoted,* which cannot be conveniently condensed into a smaller compass and is probably true in substance, when stripped of its partial colouring, it is thought best here to follow his precise words. "Captain *Fuller* still expecting, that then at last, possibly they" (meaning captain Stone and his *Marylanders*,) "might give a reason of their coming, commanded his men upon pain of death not to shoot a gun, or give the first onset: setting up the standard of the commonwealth of England, against which the enemy shot five or six guns, and killed one man in the front before a shot was made by the other.† Then the word was given, *in the name of God fall on; God is our strength*,—that was the word for *Providence*: the *Marylanders'* word was,—*Hey for Saint Maries*. The charge was fierce and sharp for the time; but through the glorious presence of the Lord of hosts manifested in and towards his poor oppressed people, the enemy could not endure, but gave back; and were so effectually charged home, that they were all routed, turned their backs, threw down their arms, and begged mercy. After the first volley of shot, a small company of the enemy, from behind a great tree fallen, galled us, and wounded divers of our men, but were soon beaten off. Of the whole company of the *Marylanders* there escaped only four or five, who run away out of the army to carry news to their confederates. Captain *Stone*, colonel Price, captain Gerrard, captain Lewis, captain Kendall,‡ captain Guither, major Chandler, and all the rest of the councilors, officers, and souldiers of the lord Baltimore, among whom, both commanders and souldiers, a great number being *Papists*, were taken, and so were all their vessels, arms, ammunition, provision; *about fifty men slain and wounded*.§ We lost only two

CHAPT.
VI.
1655.

* Mr. Leonard Strong, in his "Babylon's Fall," &c.; who might possibly have been in the battle, he being then one of captain Fuller's council.

† The man killed, it seems, was William Ayres, the ensign bearer. See the papers in note (LXXXVIII.) at the end of this volume.

‡ This is so written in the MS. but it is probable, that it was meant for captain *Josias Fendall*, so conspicuous in the province soon after.

§ Among the killed in battle, of those of governor Stone's party, Mr. *Thomas Hatton*, the late secretary of the province appears to have been one.

CHAPT. in the field ; but two died since of their wounds. God did ap-
 VI. — appear wonderful in the field, and in the hearts of the people ; all
 1655. confessing him to be the only worker of this victory and deliverance.” The author seems to lay some stress upon the circumstance of the firing upon the colours of the commonwealth, and killing the *first* man before a shot was fired by the other. But, if men will fight under colours, which they are not authorised to use, as is often the case of pirates, their opponents are not bound to respect such colours or standard ; and, as it will herein after appear, that the assumption of power by the Puritans of Maryland, in July, 1654, was never recognized by the lord protector of England, the representative of that commonwealth, it seems to follow, that the erection of the standard of the commonwealth was without any lawful authority, and governor Stone, therefore, not bound to respect it. If any importance can be attached to the fact of *killing the first man*, after the hostile proceedings of the two parties practised towards each other for some time before, it is evident, from the concurring testimony of doctor Barber and Mrs. Stone, before stated, that *the killing the first man* was by the fire from the ship in the morning before the battle began ; which was, according to the opinion of doctor Barber,—*the beginning of the war*.

Our partial author, just cited, whom we have been under a necessity of following, through want of other information, has thought it proper to conclude his pamphlet with the account of the battle, as just quoted ; except in the subjoining of a “postscript” to it, which contains nothing more than a nonsensical rhapsody of praise and glory to the Lord “for this his highest deliverance to his people, and destruction to Babylon.” He has omitted an important catastrophe of the tragedy ; of which omission his opponent* has not failed to take notice ; that is,—“the putting to death of four of captain Stone’s party by the people above mentioned, in cold blood, several days after the fight.” This omission, however, is supplied by the statements of two other authorities. Doctor Barber says, that “after the skirmish, the governor, upon quarter given him and all his company in the field, yielded to be taken prisoners ; but, two or three days after, the victors condemned ten to death, *and executed foure*, and had executed all, had not the incessant petitioning and begging of some good women saved some, and the

* Mr. John Langford, in his “Refutation of Babylon’s Fall,” &c.

souldiers others; the governor himself being condemned by them and since beg'd by the souldiers; some being saved just as they were leading out to execution." Mrs. Stone also, in her letter to lord Baltimore, states, that "after quarter given, they tried all your councellers by a councill of warre, and sentence was passed upon my husband to be shot to death, but was after saved by the enemy's owne souldiers, and so the rest of the councellers were saved by the petitions of the women, with some other friends which they found there." The four, who were shot to death, after trial by a court martial, were Mr. William Eltonhead, (probably the same Mr. Eltonhead, who had lately arrived from England, with intelligence to governor Stone, as before mentioned,) lieutenant William Lewis, Mr. Leggat, and a *German*, whose name is not mentioned, but who is stated to have lived with Mr. Eltonhead, probably as his servant. This transaction must strike every enlightened individual at this day as one of those atrocities, which the vindictive passions, incident to a civil war in any community, are too apt to produce. It is an universally acknowledged principle, that the captor in war, even in the case of *civil* commotions, has no right to put his captive to death, after surrender and quarter given. There is no necessity then to trouble the reader with a refutation of the artful apology offered by Messrs. Bennett and Matthews for this outrage upon the law of nature and nations, in their document entitled, "a paper relating to Maryland," presented by them, in the succeeding year, 1656, to the government of England.*

The unfortunate issue of governor Stone's expedition to Providence necessarily invested the Puritan party there with the full and complete powers of the government of the province. But, nevertheless each party became anxious to justify their respective conduct on the occasion in the sight of the supreme authority of the mother country—the lord protector. To this anxiety on the part of the Puritans, is attributed the detention of governor Stone and all those individuals, who had been his councillors by the commission of lord Baltimore, as prisoners of war for a much longer time after they had agreed to spare their lives, than perhaps they would otherwise have done. Thus detained as prisoners, they were prevented from writing or giving any intelligence of their conduct on the late unfortunate occasion to any

* See this document and the last clause thereof, in note (LXXXVIII.) at the end of this volume.

CHAPT. of their friends or partizans in England; and governor Stone
VI. was not allowed, it seems, to write even to his wife at St. Ma-
1655. ry's without the restriction of having his letters perused. He
had been wounded in the shoulder in the late conflict, but not
dangerously; and on that account probably they gave leave to
his wife to go up from St. Mary's to Providence to visit him.
Before her departure from St. Mary's, however, she wrote to
lord Baltimore in England the letter herein before frequently re-
ferred to, and which was subsequently in the present year pub-
lished in England by Mr. Langford in his pamphlet entitled,
"A refutation of Babylon's Fall," &c.

But a more important account of the late transactions within
the province, and one that was likely to have more weight and
influence with the supreme power of the commonwealth—the
lord protector, was written by doctor Luke Barber, before men-
tioned. This gentleman, it seems, as stated in his letter, had
been particularly well known by the lord protector himself, "not
only in his army, but also as a *domestic servant*" to his high-
ness. As he is termed a *doctor* in some of the records and do-
cuments relating to the province, it may be inferred, that he had
been either a surgeon or physician in the lord protector's army
and family, and might have come out to Maryland to better his
fortunes in one of those capacities, though it seems probable,
from other circumstances, that his embarkation for Maryland
might have been the result of some prior concert with lord Bal-
timore for *political* purposes in the province. However this
might have been, he seems to have been an uniform friend to
lord Baltimore; and the favourable disposition, which evidently
was afterwards entertained by the lord protector towards lord
Baltimore and his proprietaryship in Maryland, was in all pro-
bability much owing to the personal influence of doctor Barber
with the protector. He was detained, it seems, at Providence,
by the Puritans, with the councillors of governor Stone, for
some time, and supposing, that he should not have liberty to
leave the country and return to England, as he intended, he
wrote the letter to his highness the lord protector, herein before
cited. But the Puritans, being perhaps informed of his high
standing with Cromwell, did not detain him long, and he return-
ed to England in the same ship in which he intended to have
sent his letter, and there explained "by word of mouth to his

highnesse," as it is stated, the substance of what he had previously written.*

The Puritans of Providence, having thus, by the defeat of governor Stone, secured to themselves the government of the whole province, proceeded, as is too generally the case with the victorious party in a revolution, to the forfeiture or at least the *sequestration* of all the property of those, whom they termed "delinquents;" meaning thereby governor Stone and all those, who had acted with him in the late conflict. To effectuate this purpose, captain Fuller and his council issued the following order.

"Whereas the ordering, directing, and governing the affairs of Maryland, for the administering of justice, [and] conservation of the peace, is committed to us by the supreme authority of the commonwealth of England, &c:

"It is ordered, that captain John Smith do take what he may concerning the estates of delinquents, which are sequestered in Patuxent and Patowmack and St. Mary's; to take an inventory thereof, and use such prudential means to save indemnified the said estates, as he shall think fit, until further order come from the governor and council under his highness the lord protector."†

Our documents furnish us with no information as to the period of time, during which governor Stone and his companions were detained in custody at Providence. It is probable, that as soon as captain Fuller and his council had despatched their messengers to England, in order to forestall the accounts of their opponents and prepossess the minds of the government there in their favour, governor Stone and those prisoners, whose lives they had spared, were liberated, but with the mortification of being witnesses to the execution of the preceding order for a sequestration of their property.

* This is so stated by Mr. Langford in his "refutation of Babylon's Fall," &c. The letters of doctor Barber and Mrs. Stone are inserted at large in note LXXXV. at the end of this volume.

† "Council Proceedings from 1636 to 1657," p. 310. There is no date annexed to this document, in the record thereof; but, according to the order in which it stands on the record, it was issued prior to the 13th of August, 1655, and from what both doctor Barber and Mrs. Stone observe in their letters, as to sequestering the estates of governor Stone and the others, who had been condemned, the above order must have been issued subsequent to the battle of the 25th of the preceding month of March. Neither does it appear, whether those, who made this order, (most probably captain Fuller and his council,) made it in virtue of their powers as an *executive* or *judiciary* part of the government.

CHAPT.
VI.

1655.

Proceed-
ings in
England
relative
to these
provincial
disputes.

Notwithstanding the prosperous tide of fortune, which seemed now to attend the Puritans of Maryland in their expectations of retaining the powers conferred on them in July of the preceding year, by the commissioners—Bennett and Clayborne, yet, whether through the influence of doctor Barber or other friends, whose interference lord Baltimore had procured, it seems certain, that the lord protector was very far from gratifying the desires of lord Baltimore's opponents at this time to the utmost extent of their wishes. Indeed, it seems to be a point settled by historians, that Cromwell, soon after he had attained to his highest exaltation by being installed protector of the commonwealth, paid a greater degree of court, even to his old enemies, the Roman Catholics, than was agreeable to many of his former adherents. He knew, that the majority of this sect, especially those of Ireland, (and lord Baltimore was an *Irish* peer,) were not very zealously attached to a restoration of Charles the second; for, on his restoration protestantism would be still on the throne. He had also to encounter the secret enmity of the *political*, (or, as some called them, the *deistical*,) *republicans*, as well as some few of the religious fanatics. To counterbalance this, it was a policy embraced by him, to indicate a disposition towards a *general toleration* of all the different sects of religion then existing under his rule and government, except perhaps the Old Church of England, the members of which, he without doubt deemed to be incorrigible advocates for a restoration of the Stuart family.* He had written some "letters," or instructions, on the 12th of January, 1654–5, on the intercession, as it would appear, of lord Baltimore or some of his lordship's friends, in relation "to the proceedings of those commissioners, who were authorized to settle the civil government of Maryland;" which "letters," though it is not expressly so stated, yet appear to have been addressed to those same commissioners, who were Bennett and Clayborne, both then resident in Virginia. There had long existed some disputes between the government of Virginia and that of Maryland relative to the *bounds* of the two provinces; which disputes seem to have been confined at that

* This policy in Oliver's conduct at this time is mentioned by *Leland*, in his history of Ireland, (vol. iii. p. 399) as one of the grounds of the enmity towards him entertained by *Ludlow*, the inflexible republican; and according to *Rapin*, (Hist. Eng. Tindal's edit. vol. 11, p. 92,) Oliver considered the *republicans* at this time as his greatest enemies; and according to lord Clarendon, (p. 677,) he now courted the nobility and spoke favourably of the *order of bishop*.

time to the division line between the two provinces, on the eastern shore of the Chesapeake, separating the county of Accomack in Virginia from those of Worcester and Somerset in Maryland. These disputes arose, as has been herein before mentioned, from the supposed difficulty of ascertaining what point of land it was, which was alluded to in lord Baltimore's charter, under the denomination of *Watkin's Point*. It was with a view to this subject, that lord Baltimore gave instructions to his governors, a year or two back, as has been before stated, that endeavours should be used to cause the lands of his province bordering on that division line to be granted and settled as soon as possible, even at half the price of lands in the other parts of the province. The commissioners—Bennett and Clayborne seem to have artfully availed themselves of these differences about *bounds*, in order to cherish an animosity between the people of the two provinces; and, as appears from the several papers or documents drawn up by Bennett and Matthews, agents for Virginia in England, in the year 1656, they attempted to revive the old dormant claim of Virginia to the whole province of Maryland as being part of the original territories of that ancient dominion. Of the exact contents of these letters from the lord protector, "of the 12th of January last," we are not informed, as they do not appear to be now in existence; (at least on the Maryland records;) but, as the lord protector himself has explained them in his subsequent order, of September 26th, 1655, "they were only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other *upon the differences concerning their bounds*, the said differences being then under the consideration of ourself and council here." This letter of the lord protector, "of the 12th of January," being considerably prior in date to the battle of the 25th of March, before stated, could have no relation to that subject. The occurrence of that unfortunate event animated both parties in Maryland to a speedy recurrence to the supreme power—the lord protector. The commissioners—Bennett and Clayborne, having received in the mean time the aforesaid letter of his highness, "of the 12th of January," had mistaken, as it appears, the meaning thereof; supposing, that the lord protector "would have a stop put to their proceedings, not only as to the *bounds*, but also as to *settling the civil government* of Maryland." It is possible, that the expression quoted

CHAPT.
VI.

1655.

CHAPT. VI. by an eminent annalist from a letter written by the protector to these commissioners,—“commanding them, not to busy themselves about *religion*, but to settle the civil government,” was a part of this letter, “of the 12th of January.”* For the more full explanation of both these important subjects, as also, without doubt, to give an account of the late battle, with all its causes and consequences, the commissioners (Bennett and Clayborne) drew up a letter, or representation thereof, dated the 29th of June, to be presented to the lord protector, of which Bennett himself was to be the bearer, as well as general agent in England for the colony of Virginia. Mr. Bennett appears, therefore, about this time, (in June, 1655,) to have abdicated his office of governor of Virginia, and to have embarked for England for the aforesaid purposes. On his arrival in England, he had audience of his highness; when, without doubt, he “related” all about the late battle and contests in Maryland, as much in the favour of the Puritanic party there, as he could. His representation of the Maryland disputes does not appear, however, to have had so much effect with his highness, as might have been expected. This may be fairly inferred, not only from the tenor of his highness’s explanatory order, of the 26th of September, written perhaps soon after Mr. Bennett’s audience, but evidently from his (Cromwell’s) subsequent neglect and inattention to the whole of the Maryland contests; for, although the business came finally before him and his council, yet he never during his life made any decision upon the subject. It appears from a subsequent document, that, on the complaint of lord Baltimore to his highness the lord protector, against those people in Maryland, who were in opposition to the proprietary government, the protector referred these “controversies” to “the lords commissioners *Whitlocke* and *Widdrington*;† whose report thereof was afterwards referred by the council to the *commissioners for trade*; who made their report also, dated the 16th of September, 1656, to his highness and council; but they,” (his highness and council, “by reason of their great affaires, not having leisure to consider of the said report, the same re-

* No letter containing this quotation appears to be now remaining among the records of Maryland, as stated by Mr. Chalmers. See his Annals, p. 236.

† They were lords commissioners of the great seal. It appears, that ever since the revolution in 1648–9, the office of *chancellor* had been committed to commissioners, of whom Sir Thomas Widdrington, knight, and Bulstrode Whitlock, esqr., were two,

mained undetermined;" until an agreement took place between lord Baltimore and Bennett and Matthews, on the 30th of November, 1657, as will hereafter be more fully stated. It was during the pendency of some one of these references, that the protector wrote his order of the 26th of September, 1655, to the commissioners of Maryland, explanatory of his former letters or orders relative to the disputes between Maryland and Virginia.* Although Mr. Bennett appears to have been then, (September, 1655,) in England, acting as agent for Virginia and the Maryland Puritans, and the other commissioner of Maryland—Clayborne, was probably then in Virginia, yet, as the document wears more the appearance of an *order* than a familiar letter to these commissioners, there is no impropriety in supposing it to have been delivered by Mr. Secretary Thurloe to Mr. Bennett himself, personally attending at Whitehall for that purpose. It was to confirm the lord protector's orders, forbidding either of the colonies—Virginia or Maryland, to resort to force in order to settle their disputes about their *bounds*. Mr. Bennett being then agent for Virginia, as well as one of the commissioners for Maryland, the *order* might have been with propriety delivered to him. In further suppression of any resort to force by either of these two colonies in the settlement of their disputes, about either the civil government of Maryland or their respective bounds, the protector wrote another order or *letter*, as it is called, to the *governor of Virginia*, dated the 8th of October, 1655, in which, as is stated, "he declared his pleasure, that no obstructions be made to what had been acted concerning the civil government in Maryland by the commissioners of the late council of state in pursuance of their instructions."† After the late contest and battle, on the 25th of March, 1655, it was, perhaps, a proper determination in the protector to forbid the late officers of the proprietary government to make any insurrection or disturbance against the government of Maryland under captain Fuller and his council, who had been invested with their powers by the commissioners of the late council of state—Bennett and Clayborne. What was the rest of the contents of this letter from the protector to the governor of Vir-

CHAPT.
VI.
1655.

* See this letter or order of "the protector to the commissioners of Maryland," at large in note (LXXXVI.) at the end of this volume.

† See the two documents—one entitled, "objections against lord Baltimore's patent," &c., and the other—"a paper relating to Maryland," in note LXXXVIII. at the end of this volume.

CHAPT.
VI.

1655.

ginia, the agents, Bennett and Matthews, do not inform us in the documents just referred to. The confusion of the times seems to have created a perfect blank in our historical materials, as to any subsequent transactions within the province during the remainder of the year 1655. The hopes and fears of both parties appear to have hung with anxious suspense upon the before mentioned references.*

Fendall
appointed
governor.

Among the most active partizans, under governor Stone, in support of the lord Baltimore's government and proprietaryship of the province, during the preceding contests, was captain Josias Fendall; a man, who had rendered his name conspicuous in our records for his subsequent transactions. He had commanded the military party sent by governor Stone to the Patuxent for the seizure of some arms and ammunition, as herein before stated; which he performed with a truly *cavalier* incivility, if not, as was alleged by the Puritans, with some severity and oppression. He was in the subsequent battle of the 26th of March, and, as it would seem, was among those, who had been taken prisoners. This manifestation of zeal on his part seems to have attracted the attention of the lord proprietary towards him. After a long pause in the affairs of Maryland ensuing on the preceding storm, the first incident relative thereto, afforded by our historical materials, is the grant of a commission by lord Baltimore to captain Josias Fendall, to be governor of Maryland, bearing date the tenth day of July, 1656. The tenure of his commission was,—“To have and to hold the same during our pleasure in as ample and large manner to all intents and purposes as was formerly granted by us unto captain William Stone our late lieutenant there.” In the body of same commission his lordship nominated and appointed five gentlemen, viz. “captain William Stone, Mr. Thomas Gerard, colonel John Price, Mr. Job Chandler, and Mr. Luke Barber, and such other person or persons not exceeding three in number, as the said Josias Fendall should nominate, to be of his lordship's counsell in the

* It may be proper to mention here, that some time in this last year, 1655, another pamphlet, besides those two herein before mentioned, was published in England, relative to the Provincial disputes in Maryland. It is entitled, in the *Bibliotheca Americana*,—“Strange Proceedings in Maryland, 4to London.” But, as we have not been so fortunate as to procure a copy of this work, we are uninformed as to its contents, or in which side of the disputes it was written. The rancour of the two parties against each other would easily enable either of them to denominate the conduct of their opponents. “Strange Proceedings,”

said province.*” What motives lord Baltimore had for substituting Fendall as governor of his province, instead of captain Stone, we are not informed. From the circumstance of nominating the latter first among the council, it might be inferred that it was done for no great displeasure entertained by his lordship towards governor Stone, but was dictated by some policy not easily now to be discovered. We are to hail this commission, however, as an earnest promulgation of the high hopes and expectations, which his lordship began now to entertain, that the ruling powers in England were not his enemies, and that, although he might not be completely restored to all his rights in Maryland, yet that his enemies, Bennett and Matthews, now labouring against him in England, were not likely to succeed in depriving him of his province. Whether Fendall was now in England with lord Baltimore, when this commission was granted to him, or had remained in Maryland and his lordship had dispatched the same to him, is not now to be ascertained. It seems certain, that he had now, during the summer of 1656, begun to put in practice some rebellious proceedings against the *Puritan* government of the province; and in this conduct, it seems, that he professed to act, as the record expresses it, “under a pretended power from captain William Stone.” From whence it may be inferred, that his movements in relation thereto were with the assent and approbation of governor Stone, and that his lordship, with the privity, and at the request, of the governor, had been induced to clothe him with the powers mentioned in the preceding commission. The *Puritan* rulers of the province appear, however, to have been too vigilant for Fendall. They had caused him to be arrested upon “suspicion” only, and he was brought before the provincial court to answer the charge exhibited against him, to wit, “of his dangerousness to the public peace;”—and upon this charge he was committed to prison. As the record of this transaction strongly develops the ideas of law and liberty prevalent in those times, especially with those who most affected a regard for them, it may be here inserted.

“At a provincial court holden the 13th of August, 1656:— Present, captain William Fuller, Mr. Edward Lloyd, Mr. Richard Wells, captain Richard Ewen, Mr. Thomas Marsh, and Mr. Thomas Meers.

He is arrested and imprisoned by the Puritans.

* See this commission at large, in note (LXXXVII.) at the end of this volume.

CHAPT.
VI.

1655.

"Whereas Josias Fendall, gent., hath been charged, in the behalf of many of the commons, inhabitants of Maryland, by their declaration exhibited in court, that he the said Josias Fendall, contrary to his oath taken to the present government of the said province, hath openly acted to the disturbance of the public peace and government of the said province, for that end assuming a pretended power from captain William Stone, to the great hindrance of the public affairs, and to the distraction and damage of the people; to which charge the said Josias Fendall, having full and free liberty to answer, hath made no sufficient plea to traverse or make void the said charge, but rather disowning the power of the court; It is therefore ordered by this present court, that, in regard the said Josias Fendall hath and still doth give just ground of suspicion of his dangerousness to the public peace of this province, if he should enjoy his liberty, he the said Josias Fendall shall go to the place from whence he came a prisoner, and there abide in safe custody *until the matters of government in the province of Maryland shall be further settled and fully determined by his highness the lord protector of England and council of State upon a legal hearing, to which also the said Josias Fendall doth consent in court.*"

It appears, that on a subsequent day he was either brought or came himself, into the provincial court, and took an oath to the following purport:

"September, 24th, 1656.—Captain Josias Fendall hath this day in open court taken oath, in the presence of God and before the face of the whole court, he will neither directly nor indirectly be any disturber to this present government till there be a full determination ended in England of all matters relating to this government."* We must suppose, that on the taking this oath he was discharged from his imprisonment, although it is not expressly so stated on the record. The *indefinite* period of his imprisonment, according to the foregoing commitment, to wit, "*until the matters of government in Maryland should be settled by the protector,*" (an event that never did take place,) might have impressed the court with the impropriety of such a commitment, especially when the law was, even then, that a commitment should be only until he should be discharged *by due course of law*. We shall see Mr. Fendall, however, again exercising

* These proceedings of the provincial court are taken from the record book in the council chamber, entitled, "Council Proceedings from 1636 to 1657," p. 314.

his talents for rebellion and insurrection against even the government, whose cause he now espoused.

CHAPT.
VI.

In the mean time, while these proceedings were had in Maryland against Fendall, the affairs of lord Baltimore in England, with respect to his proprietary rights in his province, were going on most prosperously. The lords commissioners Whitlocke and Widdrington, to whom the business had been *first* referred by the protector, had, some considerable time before this, made their *report* upon it to Cromwell's council of state; but, for some reason not now to be ascertained, the council, by the direction of Cromwell as we may suppose, caused the *report* of the said lords commissioners to be again referred to certain persons, entitled, "The Commissioners for Trade."* These last mentioned commissioners, ("for trade,") made and returned *their* report on the subject "to his highness and council," on the 16th of September, 1656. Posterity have been unfortunate in respect to both these reports. The former does not appear to be now extant; at least, not on the records of Maryland. The latter was sent into the province by lord Baltimore at the same time and together with his *instructions* of the 23d of October, 1656, to his lieutenant general of the province; which instructions were, without doubt, predicated upon this last mentioned report of "the commissioners for trade." A copy of this report, together with the instructions, appears to have been regularly recorded in one of the record books of the council chamber of the province, but, through mischief, or carelessness, the first leaf of the book is torn out, in which that report, together with a part of the instructions, had evidently been recorded.† This report of the "commissioners of trade" must have been highly favourable to lord Baltimore; inasmuch as it is stated to have been the basis of the treaty or agreement, which subsequently in 1657 took place between lord Baltimore and Bennett and Matthews, the agents in England for the Puritans of Maryland as well as for the colony of Virginia. It is highly probable, that this "committee for trade" thought, that the lord proprietary's government

1656.
The government
of England
favourable
to lord Bal-
timore.

* Whether these "Commissioners for Trade" were a committee formed out of the council of state, to whom all subjects relative to the *trade* of the commonwealth were referred, or whether certain persons, distinct from the council, formed a *board of trade*, erected by commission from Cromwell himself, does not clearly appear.

† In the book entitled "Council HH. 1656 to 1668," still remaining in the council chamber; but the greatest part of the first leaf thereof has been torn out, and some of the other leaves much defaced, so as not to be entirely legible.

CHAPT. VI. of the province, according to his patent for the same, was not incompatible with the then form of government in the mother country, and that, as his lordship had been at great expense in the settlement of his province, which expense could not as yet have been reimbursed to him, there would have been great injustice in depriving him of his profits and emoluments therein. They therefore awarded, that his lordship should be restored to his government of the province, under certain restrictions as to the enacting of laws affecting religious liberty. If such was the substance of the report of the "commissioners for trade," of the 16th of September, as we may fairly infer from the subsequent agreement mentioned to be founded thereon, it must now have afforded matter of high triumph to lord Baltimore, as also to his friends in Maryland, when they came to be informed thereof. A petition, it seems, had been sent from Virginia, probably from the assembly thereof, after their "reducement," and presented to the government of England, relative not only to the *bounds* between the two provinces, but also to their claim of the whole province of Maryland as "belonging to Virginia."* Among other circumstances attending this report, mortifying to the agents—Bennett and Matthews, one was, (of which they grievously complained,) that "nothing was either said or done by the commissioners concerning the Virginia petition, which related very materially to the business of Maryland, especially in that particular of the *bounds* by them claimed." It is probable, that, as to the subject of the *bounds* of the two provinces, Cromwell claimed the settlement thereof, as of his own special prerogative, "to himself and council," as he expressed himself in his order of the 26th of September, 1655, before mentioned, and had referred only the *disputes*, "that had happened between the men of Severn and lord Baltimore's officers," to the commissioners for trade. This supposition is not inconsistent with or repugnant to the orders, which are said to have been previously given by Cromwell to the governor and council of Virginia,— "not to meddle in the business that hath happened between the

* That this claim had been made by Virginia, is evident from what is mentioned of "the Virginia petition," in the joint letter of Bennett and Matthews to secretary Thurloe, dated October 10th, 1656, herein after stated; particularly from the expression therein,— "in case it belong not to Virginia;" and from a variety of passages in those "Papers" drawn up by Bennett and Matthews in the year 1656, as they appear in Hazard's Collections, vol. i. pp. 621,—630, taken from *Thurloe's State Papers*.

men of Severn and lord Baltimore's officers,"—(meaning without doubt the late battle of the 25th of March, 1655,)—"but to leave that affair to be settled by the commissioners of the parliament;"—for although this prohibitory order *to the governor and council of Virginia* amounted to a *recognition* by the protector of what had been previously done by Bennett and Clayborne, as "commissioners of the parliament," in their "reducement" of Maryland in 1654, yet it is evident, that this "business between the men of Severn and lord Baltimore's officers," to wit, the resort to force and battle in 1655, was subsequently referred to the "commissioners for trade." Not having cognizance of the dispute between the two provinces as to their *bounds*, these commissioners could else have had nothing to determine, if they had not the disputes "between the men of Severn and lord Baltimore's officers" to settle; which disputes related to the civil government of the province. This order of Cromwell to *the governor and council of Virginia* is so stated by an eminent annalist,* without mentioning any date to it. It is probable, that it was issued by Cromwell soon after he had received intelligence of the battle in Maryland of the 25th of March, 1655, perhaps about midsummer of that year. The commissioners of parliament, therein mentioned, must have been Bennett and Clayborne; who had acted in the "reducement" both of Virginia and Maryland, in 1652 and 1654, as commissioners under the council of state appointed by the old long parliament, and in common parlance appear to have been spoken of as commissioners of the parliament, and are mentioned under that denomination in the articles of the surrender of Virginia, of March 12th, 1651-2. But this subsequent recognition of what had been done by Bennett and Clayborne in the reducement of Maryland in 1654, by no means proves, that in so doing they were then authorised *by the lord protector*, as they then alleged, to settle the government of Maryland. A recognition of the validity of a transaction when done is different from an original power or authority for so doing. And the lord protector might have, subsequently to this *recognition*, with great propriety thought, that the settlement of the civil government of a province was too much to be entrusted to such men as Bennett and Clayborne; the latter of whom was evidently too much *interested* as to property, which he claimed in Maryland, to be a fit person on such an occasion, and the

CHAPT.
VI.
1656.

* Chalmers's Annals, p. 224.

CHAPT. former was most probably an illiterate fanatic, who busied him-
 VI. self too much about religion, as may be inferred from the protec-
 1656. tor's *reproof* to him before mentioned.* It may be further re-
 marked, that this order of prohibition to the governor and council of Virginia must have indicated to them strong symptoms, that the ancient dominion was not to recover its supposed lost territory of Maryland; and seems to have been regarded by the *assembly* of Virginia, which sat in October, 1656, with all that respect and attention, which the orders of Oliver generally inspired. This assembly must have supposed, that their agents—Bennett and Matthews, then in England, were insufficient to support their sinking cause with the protector and his council, for, at this session, on the fifteenth of October, 1656, they came to the resolution of sending another agent to England, and accordingly appointed Mr. Edward Digges, who was then the governor of Virginia,—“a worthy person,” as they say in their letter of credence to his highness,—“whose occasions calling him into England, we have instructed him with the state of this place as he left it.” A part of the “instructions,” now drawn up for Mr. Digges by the assembly, was, that “he was to assure his highness, that, according to his letter, they had not interested themselves in the business betwixt Maryland——† and have been unconcerned in their quarrel from the beginning until this time, and so shall continue according to his highness's direction in that letter.”‡

* Chalmers, (in his *Annals*, p. 224,) remarks,—that “the deputies of the protector in Maryland,”—(meaning Bennett and Clayborne,) “seem neither to have been men of much political knowledge, nor extremely attentive to the punctualities of duty; and the protector had expressly “commanded” them, as he states in another place, “not to busy themselves about religion.

† This blank appears to have been so in the record; and seems to have meant “betwixt Maryland” and the Puritans there settled.

‡ The letters of the assembly to his highness and Mr. Secretary Thurloe, as also the “instructions” to Mr. Digges, are given at large by *Burk*, in his *Hist. of Virginia*, (vol. ii. p. 116,) and therein expressed as—“Dated from the assembly of Virginia, 15th *December*, 1656.” But, it is remarkable, that one of these same documents, to wit, the letter to secretary Thurloe, is published also in *Hazard's Collections*, (vol. i. p. 632,) apparently with more accuracy; wherein it is thus dated, “The assembly of Virginia, 15th *October*, 1656.” The copy in *Hazard's Collections* purports to have been taken from “Thurloe's State Papers, vol. v. p. 497, A. D. 1656.” That in *Burk's Hist.* was most probably taken from the records of Virginia. One of the dates must be erroneous. It is probable, that the letter to Mr. *Thurloe* himself, and published by him, is the more accurate one. The *History of Virginia* by *Burk*, is full of such blunders, and betrays the *national foible* of that historian. He seems to have been too much enamoured with his own supposed talents for fine writing, to have attended to *dates*; and

The report of the commissioners for trade, however favourable to lord Baltimore, was nevertheless not yet ratified by Cromwell and his council, and therefore not obligatory upon the opposite party. We see them, consequently, still labouring with indefatigable zeal against a restoration of lord Baltimore to his proprietary rights. On the tenth of October, within less than a month after the date of the report, we find the agents—Messrs. Bennett and Matthews, then in England, continuing their inveterate opposition to lord Baltimore, by drawing up a paper entitled, “Objections against lord Baltimore’s patent, and reasons why the government of Maryland should not be put in his hands;”—which they enclosed in a letter to Mr. Secretary Thurloe, to be presented by him to his highness the protector. After making the old stale objection to the lord proprietary’s patent, on account of Clayborne’s prior settlement of the isle of Kent, they proceed to a variety of other objections and reasons, herein before frequently remarked upon, the substance and burthen of which seem to have been, that, if lord Baltimore was restored to his proprietary government, “Papists would bear rule over the free born subjects of the English nation.” This paper contest, before the protector and his council, seems to have been carried on by the agents for some considerable time during the remainder of the year 1656, possibly with reciprocal answers on the part of lord Baltimore, of which last, however, we have no record or copies. The documents, on the part of the agents, seem to have been preserved by Mr. Secretary Thurloe, and published with his Collection of State Papers:—particularly two others, one entitled, “A paper relating to Maryland,” and the other, “A *breviat* of the proceedings of the lord Baltimore and his officers and compliers in Maryland against the authority of the parliament of the commonwealth of England, and against his highness the lord protector’s authority, laws, and government.” As every event referred to, and every objection raised by the agents in these documents, have been herein before largely commented upon, it is unnecessary to repeat any further remarks on them.* After the agents had said perhaps all they

CHAPT.
VI.

1656.

The agents
Bennett
and Mat-
thews, per-
severe in
opposition
to his lord-
ship.

when he gets upon the subject of *republicanism*, which is as often as he can conveniently, and particularly on the proceedings of this assembly, it seems to affect him as chivalry did Don Quixot.

* As these documents form so prominent a groundwork for the history of Maryland for many years previous to this period of time, it is proper that the reader should have the perusal of them at large. See them in note (LXXXVIII.) at the end of this volume.

CHAPT. VI. could say upon the subject, in their written documents presented to the protector and his council, the contest appears to have remained in a state of suspension, unsettled, and undetermined. Much "greater affairs" occupying the attention of his highness and his council, they had no "leisure" to attend to the petty proceedings of a distant colony.*

Lord Baltimore sends instructions to his governor.

Lord Baltimore, however, appears to have been too sensible of the advantages, which the report of the commissioners for trade gave to his cause, to wait for the final decision of the protector and his council. As before observed, it is probable that he had some previous intimation given him of the disposition of the commissioners for trade in his favor, when he sent his commission, of the tenth of July, to Josias Fendall, to be governor of his province. On the return of their report to the protector and council, on the 16th of September, he became so much more emboldened by their decision, as to enter upon preparatory proceedings for the recovery and possession of his province. He appears, accordingly, to have drawn up his "instructions, of the 23d of October, 1656," to his lieutenant general, (Fendall,) in pursuance of the resolution, which he seems to have now formed. The injury done to one of the record books of the province, as before mentioned, has deprived us of the information to have been derived from this document, entitled, "instructions," &c. From subsequent documents, however, we learn, that his lordship had, with these instructions, sent a copy of the report of the commissioners for trade, in order, as we may suppose, to shew to all the inhabitants of the province the solid ground of his proceedings. The leaf torn out of the record book most probably contained a copy of this report, as also the preamble and one or two articles of the instructions; but from

* In the *Bibliotheca Americana*, under the year 1656, mention is made of another pamphlet, published in London in that year, having relation, as it would seem, to these provincial contests between Virginia and Maryland. It was entitled,—*"Leah and Rachel, or the condition of the two fruitful sisters, Virginia and Maryland, by J. Hammond: quarto. London."* As we have not been able to procure a sight of this pamphlet, a copy of which is not perhaps existing in Maryland at this day, the contents thereof are unknown to us. There are many families of the name of *Hammond*, still residing in Maryland, and the author thereof might possibly have been one of them. If so, we may presume, that he would have espoused the cause of the younger sister—Maryland. He might have thought, that Virginia might be likened unto *Leah*, the elder sister—homely and blear-eyed, and for ever jealous of the rising beauty of *Rachel*, her younger sister. It may be said, however, that the sisters still have a great resemblance of each other both in morals and in manners.

a remnant of the leaf we collect, that his lordship had instructed his lieutenant general to see, that the act of assembly of 1649, ch. i. entitled, "An act concerning religion,"—"be duly observed in the said province by all the inhabitants thereof, and that the penalties, mentioned in the said act, be duly put in execution upon any offenders against the same or any part thereof;" and particularly that part thereof, whereby "all persons in the said province are to have liberty of conscience and free exercise of their religion." There seems to be every probability, that this part of these instructions were in exact conformity to the report of the commissioners for trade, and as that report was most probably intended to be agreeable to Cromwell's ideas, it affords additional evidence, that the disposition of this extraordinary man was at this time in favour of a general toleration of all sects of religion; perhaps indeed, through the interested motives of winning over all parties to assent to his assumption of the royal power.

CHAPT.
VI.
1656.

In the third article of these instructions, his lordship, with a laudable gratitude, directed donations of land to be made to several of those, who had been conspicuously faithful to him during the late contests:—particularly to captain Josias Fendall, "his lordship's present lieutenant there," 2000 acres:—to Mr. Luke Barber, 1000 acres:—to Mr. Thomas Trueman, 1000 acres:—to Mr. George Thompson, 1000 acres:—to Mr. John Langford 1500 acres:—to Mr. Henry Coursay, 1000 acres.*

He moreover instructed his lieutenant and council to take special care of those widows, who had lost their husbands by the late troubles, viz. Mrs. Hatton, Mrs. Lewis, and Mrs. Eltonhead; that they should be supplied out of his lordship's rents and profits for their present relief and sustenance in a decent manner, in case they stood in need thereof; and that they let his lordship know, wherein he could do them any good, in recompense of their sufferings, and that they be assured, on his lordship's behalf, that he will continue his utmost endeavours, (by soliciting his highness and council,) for the procuring of justice to be done them for the lives of their husbands, and sat-

* Dr. Barber's letter, before stated, manifests his friendship for his lordship; Mr. Langford's "Refutation of Babylon's Fall," &c., much more so, and well deserved his lordship's remuneration; and Mr. Henry Coursey demonstrated his fidelity to his lordship in accompanying captain Stone on his march, and carrying a message from him to the Puritans of Severn. If there be any of the descendants of these gentlemen, above mentioned, now in possession of these ample estates, they may boast of holding them by a very honourable tenure.

CHAPT. VI.
 1656. isfaction for their losses from those, who have done them so great injuries; which he doubts not but will be at last obtained. He further instructed his governor and council to cherish and comfort, in what they could, all such persons as had approved themselves faithful to his lordship, and done him good service during the late troubles of the province; and that such persons should be preferred before any others to such places and employments of trust and profit as they might be respectively capable of; in particular Mr. Thomas Trueman, Mr. George Thomson, lieutenant Thomas Tunnell, and Mr. Barton: and that his said lieutenant and council let his lordship understand from time to time, wherein he could upon any occasion requite them and others, who have been faithful to his lordship, with any thing in the province for their advantage, according to their respective merits, assuring them that his lordship would be very ready and willing to gratify them in any thing, that should be reasonably desired of him and in his power to do.

Having thus expressed his gratitude to his friends in Maryland, his lordship proceeds in the last place to instruct his governor and council, relative to the *bounds* between his province and Virginia, so much the subject of contest and litigation at that period of time. For this purpose he directs them to take special care, that no encroachments be made by any person upon any part of his lordship's province; and for the better prevention thereof, he required them, to cause the *bounds* thereof to be kept in memory and notoriously known, especially the bounds between Maryland and Virginia on that part of the country known there by the name of the *eastern shore*. On this occasion he referred them to the maps of Maryland, which his lordship formerly sent thither; whereby the said bounds are described.* He also at the same time sent to them a copy of the proclamation, published heretofore by the then governor and council of Virginia, bearing date the 4th of October, 1638, for prohibiting any person of Virginia from trading with the Indians in Maryland without his lordship's license: in which proclamation were described the *bounds*, as they were then supposed to be, between Maryland and Virginia.†

* It is probable, that none of these maps of Maryland are now extant. I could find none in the council chamber.

† See before in the first chapter of this history, (p. 72, 73,) and the proclamation of the 4th of October, 1638, at large, in note (XIII.) Also, see the above

These instructions indicate the high hopes and strong assurances, which lord Baltimore now entertained, as to his speedy restoration to his proprietary rights over his province of Maryland. He might still, however, have retained in his own mind, perhaps after experiencing repeated instances of treachery, great distrust even in those, whom he had placed at the head of his provincial government. He therefore now did the wisest act, he had ever yet done or could possibly have done, since the death of his brother Leonard, next to transporting himself into his province,—he resolved to send his *brother* Philip Calvert to take care of his affairs there. For popular reasons, perhaps, he did not choose to make him governor; but he created him, by commission, bearing date the seventh of November, 1656, one of the councillors to the governor, and, as was usual with such office, a judge or justice of the provincial court. He also, by the same commission, made him *principal secretary* of his province; also, “principal officer, for the entring and recording of all grants to be made of any lands or offices within the said province, and for the probates, entring, and recording of wills and inventories, and granting letters of administration.” In the exercise of these great and important offices, he would necessarily have a considerable control over any very improper conduct of the governor or the rest of the council.* About the same time, and prior to the departure of his brother from England, as it would seem, he drew up certain additional *instructions*, bearing date the 12th of November, 1656, to his lieutenant general and council, in which he directs them to cause certain proportions of land, therein mentioned, to be surveyed and assigned to the several persons, whom he therein also mentions, “until his lordship should send a new great seal thither, (which he will shortly do,) whereby the said lands may be granted under the same.” One of the grants hereby intended to be made, and which probably was afterwards executed, was “to his lordship’s brother Philip Calvert, Esq., his secretary of the said province of Maryland, six thousand acres, to be erected into one or more manors, and to be called by such name or names as his lordship’s said brother shall think fit.” The third and last clause

CHAPT.
VI.

1656.

Lord Baltimore
sends his
brother
Philip Calvert to
Maryland.

mentioned *instructions*, of the 23d of October, 1656, at large in note (LXXXIX.) at the end of this volume, that is, so much of that document as is not torn off with the first leaf of the book.

* See this commission to Philip Calvert, esq., at large in note (XC.) at the end of this volume.

CHAPT. also of these last mentioned *instructions* requires to be particu-
 VI.
 1656. larly noticed, inasmuch as it seems to indicate, that the lieutenant general or governor Fendall, although commissioned on the tenth of July preceding, had never yet entered on the duties of his office, unless he did so prior to his qualification by taking his oath of office. The clause is as follows:—

“3. His lordship doth hereby authorise and require his lordship’s brother, Philip Calvert, esqr., his principal secretary of the said province of Maryland, to administer in open court there the oath of his lordship’s lieutenant of the said province to captain Josias Fendall, his lordship’s present lieutenant there.”*

1657.
 Mr. Barber appointed deputy governor, in the absence of governor Fendall.

Our documents do not furnish us with any further information whatever of the affairs of the province for the remainder of the year 1656. We are to suppose, however, that Mr. Philip Calvert embarked for America soon after the date of his commission; and would, therefore, probably have arrived in Maryland, at farthest in the spring of 1657. Accordingly, we find him sitting as a councillor with governor Fendall at St. Mary’s on the 18th of June, 1657. Although five persons had been by the governor’s commission nominated as his council, two of whom were captain Stone and Mr. Barber, yet on this occasion the “council,” as it is called in the record, consisted only of “the lieutenant and Mr. Secretary.” In the proceedings of the day, as recorded, it is expressly stated, that “the lieutenant” was Mr. Fendall, and from all circumstances we are warranted in the inference, that the “Mr. Secretary,” mentioned in the record, was Mr. Philip Calvert. The sole business, upon which they met, appears to have been the appointment of Mr. Luke Barber as deputy lieutenant or governor, in the room of Mr. Fendall, who, as stated in the record, then declared his resolution of leaving the province, upon business, as it subsequently appears, relative to the lord proprietary’s affairs in the province, which required his presence and personal attention in England. A commission to Mr. Luke Barber for this purpose accordingly appears in form on the record, stating the powers of governor Fendall under his commission of the tenth of July last to be the same as those granted to and held by captain Stone under the commission of the latter dated the sixth of August, in the

* Taken from the record book in the council chamber, entitled, “Council, HH. 1656 to 1668,” p. 6. Such parts of the same instructions of November 12, 1656, as relate *generally* to the surveying and granting of lands within the province, are stated in Kilty’s Landholder’s Assistant, p. 54.

seventeenth year of his lordship's dominion; (*Annog. Dom.*, CHAPT. VI. 1648;) in which power was granted to captain Stone, in case of his death or absence out of the province, to nominate, elect, and appoint any other person of the council in his place.* Mr. Barber was, by his commission, to hold his office only until such time as governor Fendall should return again into the province, or until the lord proprietary should signify his pleasure to the contrary. His general powers also, as to granting warrants for taking up lands, were restricted by the same commission to cases, where the secretary, (Mr. Calvert,) should give a certificate "of *rights* duly entered in his office for the same."†

In pursuance of the foregoing proceedings, governor Fendall appears to have embarked soon afterwards for England. Al- though the imputation of treachery has been attached to his character, as handed down to us, arising out of his subsequent conduct, yet there is no ground, on the present occasion, for supposing, that he was at present actuated by any other motive than a sincere fidelity to the cause of lord Baltimore; and it may, therefore, be presumed, that he now undertook his voyage to England for the sole purpose of consulting and co-operating with his lordship in such plans, as they should deem best, for the speedy restoration of the proprietary government in Maryland.

In the mean time, however, the affairs of the province presented a deplorable prospect. When an aggregation of people in a state of society are doomed to be harassed by two opposite factions, contending for the powers of government over them, the situation of every man in such a community becomes dangerous in the highest degree. It is this circumstance, which always renders rebellions or revolutions, as they may turn out to be called, alarming to every good mind. No man's property, liberty, or life can be enjoyed in such a state of things with any assurance of safety. He cannot serve two masters. If he obeys one, he is either destroyed, exiled, or punished by the other. This was precisely the lamentable condition of every man in Maryland at this time. Mr. Fendall, in conjunction with captian Stone and Mr. Barber had ventured, as it would appear, to rear the standard of revolt against the Puritan au-

* See captain Stone's commission at large, before referred to, in note (LXII.) at the end of this volume.

† See a copy of the record of these proceedings in note (XCI.) at the end of this volume.

Fendall
goes to
England.

The divi-
ded state
of the pro-
vince.

CHAPT. VI.
1657.

thority, usurped, as they contended, through the ascendancy acquired by the unfortunate battle of the Severn. But Mr. Fendall's revolt, when he left the country, does not appear to have extended further than the limits of St. Mary's county at most; but more probably only to those first settlements which were first made at and near to the contemplated city of St. Mary's. There were numerous inhabitants, who had seated themselves, not long after the first emigration to the province, on both sides of the Patuxent; who appear to have formed a distinct district of settlement from that of the original seat at the city of St. Mary's. Among these settlers many Puritans had intermingled and obtained grants of lands there; it being agreeable to lord Baltimore's system of general toleration of all sects of religion, that every applicant for a grant of land should be admitted thereto, on making out his *rights* to the same, whatever his religious profession might be. Hence therefore we find, that when the Puritans on the Severn revolted against the proprietary government, previous to the first "reducement" of Maryland in 1652, they found many friends on the Patuxent, who joined them. Captain Fuller and his council had also, after the government of the province was vested in them by the parliamentary commissioners—Bennett and Clayborne, in the same year, fixed the seat of government at the house of Mr. Preston on the Patuxent, where the provincial records were deposited, and the Puritan assembly of the 29th of October, 1654, was held; and we have just seen, that when governor Stone was about marching to Providence on the Severn, in 1655, he was obliged in some measure to make a conquest of most of the settlers on the Patuxent, and to take away their arms and ammunition; from the house of one of whom also—Mr. Preston, the provincial records were carried back to St. Mary's. The Puritans, therefore, appear at this time, on the departure of governor Fendall to England, to have had under them a full half, if not more, of the population of the province, comprehending the settlements on the Severn and the Patuxent, together with those on the isle of Kent; which island, although it had been acknowledged in the treaty with the Susquehanocks, of the fifth of July, 1652, to have belonged to captain Clayborne, yet, notwithstanding this acknowledgment of his propriety therein, the inhabitants thereof appear to have been still constantly subject to the Puritan government of the province.

In this divided and distracted state the province appears to have been, when captain Fuller and his council thought it proper to convene another assembly. They met, agreeably to their summons as we may presume, on the 24th of September, 1657, at *Patuxent*. The lower house appears to have consisted of only ten members, including captain Richard Ewens the speaker. We notice also the name of captain Robert Vaughan among the members; which seems to be an additional confirmation of what we have just supposed, that the government of the isle of Kent acted in unison with or subordination to that on the Severn, and that Mr. Vaughan might now sit as a member for the isle of Kent county, as he had formerly done at St. Mary's under the proprietary government.* As the names of neither the governor—captain Fuller nor of any of his council, except captain Ewens, the speaker, do not appear in the list of the members of this session, it is possible, that they might have sat as an upper house.† We have no journal of their debates or proceedings, but only copies of the laws enacted by them at this session. The first legislative act done by them was a confirmation of the “act of recognition,” passed at the preceding session of assembly, held by the Puritans in October, 1654. Some acts of that same session, of no great moment, were now repealed by them. It was necessary also to provide for the expenses of their government; which they did under the denomination of “public charges;” but by a species of taxation not very popular in modern times—a poll tax. The act was as follows:—

“It is ordered, enacted, and declared, in the name of his highness the lord protector of England, and by the authority of this present general assembly, that all public charges of this province shall this present year be levied upon all persons taxable per

* By one of the acts of this session, Poplar island, lying contiguous to the eastern shore and south of and within a mile or two of Kent point, was made a part of the isle of Kent county. From which it may be inferred, that this small island, containing about seven or eight hundred acres, was then settled and inhabited.

† See the names of captain Fuller's council, before, p. 505. In this early period of our history, and amidst the civil disturbances of these times, it is a matter of some interest, especially to the posterity of the present day, to know what side their ancestors took in these provincial contests. The names of this assembly, as they are on the record, are as follows:—captain Richard Ewens, speaker; captain Robert Vaughan;—captain Robert Sley;—captain Joseph Weeks;—Mr. Robert Taylor;—captain Thomas Beston;—Mr. Peter Sharpe;—captain Phil. Morgan;—Mr. Michael Brooks;—and Mr. James Johnson.”

CHAPT.
VI.
1657.
Another
Puritan as-
sembly is
called, and
meets.

CHAPT. VI. poll; and all *men servants*, that are or shall be brought into this province for the future, of what age soever they be, shall be taxable per poll as aforesaid.”
1657.

It is to be presumed, that the “*men servants*,” herein mentioned, were not *negro slaves*, but white servants imported into the province under indentures for a temporary servitude; and, as would appear to be reasonable, that the servants themselves did not pay this tax, but their owners. In this way, the tax would be, in a small degree, a tax upon *property*. Poll taxes, however, were not thought in those times so highly objectionable, as since the American revolution. It was the mode of raising public revenue then generally used in our sister colony of Virginia; from whom Maryland has always been accustomed to borrow both good and bad habits.* By another act of this assembly, “it was agreed and assented unto, that all necessary *charges*, that were occasioned by the disturbance of captain Josias Fendall, should be paid and discharged by a public levy on the province.” This last mentioned act, together with an “order” of this same assembly, “for payment of all just demands for killing wolves in St. Mary’s county,” seem to indicate that governor Fendall’s revolt, from the Puritan authority over the province, had not been quite successful even in St. Mary’s county, but that this assembly exercised their sovereignty over that part of the province as well as the rest of it.

The Puritan government at Providence on the Severn having, in virtue of their executive or judicial power,† issued an order, soon after the battle in 1655, for the sequestration of the estates of such *delinquents*, as resided on Patuxent, Patowmack, and in St. Mary’s, that is, of those of the proprietary party there;‡ which order not having been honestly executed, as it

* The *public levy* laid by the assembly of Virginia, which sat in November 1654, at James city, was a *poll tax*, to be levied on all the *titheables* of the several counties therein mentioned, at 26 lb. of tobacco *per poll*. Burk’s Hist. Virg. vol. ii. p. 101. The *Maryland* poll tax was fixed, by our above mentioned assembly of 1657, at 32 lb. of tobacco *per poll*.

† This peculiarity in our proprietary government, and indeed in most of the English colonial governments, has been herein before noticed; to wit, that the governor and council of the province possessed threefold powers, and therefore acted occasionally as the *executive* branch of the government, or as a branch of the *legislature*, or in a *judicial* capacity; in the last instance constituting the provincial court. Captain Fuller and his council seem to have continued the same mode of government, except, perhaps, that it does not appear to be quite certain, that they ever sat as an *upper house* of the legislature.

‡ See before, p. 529.

CHAPT.
VI.
1657.

would appear, this assembly, of 1657, now appointed a standing committee of three of their members, to wit, captain Richard Ewens, captain Thomas Beston, and captain Joseph Weeks, who were to continue to sit after the session; with power "to question and call to accompt any person whatsoever in the province, that had received or disposed of all or any part of the *fin*es amerced upon any of the *disturbers of the publick peace* of the inhabitants of this province in the last engagement; and that all the sheriffs, in their respective places and counties within this province as aforesaid, are likewise required by virtue of this order, to give and deliver a just accompt to the aforesaid committee of all and every part of the aforesaid *fin*es* by them received, or to whom they were paid, or by whom they were disposed; which foresaid accompt to be made and given to the foresaid committee, or any one of them, by the first of January next; and it is further ordered, by the authority aforesaid, that the said committee are required, in the speedy dispatch of their charge and trust committed unto them as aforesaid, faithfully to declare and make manifest all and every thing, that shall be in their own knowledge, or that shall be delivered or declared unto them, and return a just and full accompt and report thereof unto Mr. Michael Brooke or Mr. Peter Sharpe, before the provincial court to be holden at Patuxent in March next, which foresaid report is there to be presented to the provincial court as aforesaid, to their consideration in the premises as far as may tend to the public good, that they may receive further satisfaction therein."†

When this assembly adjourned, or rose from their session, we

* The word—*fin*es, here used, is to be understood as synonymous to *ransom* or *composition*. To make *fine* and *ransom* for any offence amounting to a breach of the peace is an old law phrase. See *Litt.* sect. 194, and *Coke's* comment thereon. Also *Cunningh.* Law Dict. verb. *Finem facere*. There was, at common law, an ancient writ, entitled, *Fine capiendo pro terris*, &c., "lying for one that, upon conviction by a jury, having his lands and goods taken into the king's hands, and his body committed to prison, obtaineth favour for a sum of money, &c., to be discharged from his imprisonment, and his lands and goods to be redelivered unto him." *Ibid.* The above proceedings, against our Maryland *delinquents*, seem to have been founded on these principles. The purport of the order of 1655, to which these *fin*es evidently had relation, was, not to *forfeit* the real estates of the *delinquents*, but to *sequester* the profits arising from them, until composition was made by the offenders; and, in the receipt of this composition money, some frauds appear to have been practised, as may be inferred from the above order of the assembly.

† The foregoing extracts from the acts and orders of the Puritan assembly, of September, 1657, were taken from the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 465.

CHAPT. VI. are not informed; nor have we any further information of any transactions relative to the province during the remainder of the year, except those which had in the intermediate time taken place in England.

The agree-
ment be-
tween lord
Baltimore
and the
agents,
Bennett
and Mat-
thews.

1657.

The before mentioned report of the committee for trade, of the 16th of September, 1656, being in a great degree decisive of the dispute between lord Baltimore and the Puritan agents, Bennett and Matthews, (wanting only the confirmation of the lord protector,) and purporting in substance, as may be fairly inferred, that lord Baltimore should be reinstated again in the government of his province, though perhaps under certain restrictions, conditions, or limitations therein expressed, these agents began to perceive, from the inattention and indifference of the lord protector about the business, or, as stated in the record, "by reason of his great affairs, not having leisure to consider of the said report," that his final decision, if ever made, would in all probability be a confirmation of the said report. Under this impression, they seem to have been now softened into a disposition for accommodation of the controversy on friendly terms with the lord proprietary. It will be recollected, that Mr. Edward Digges had been sent to England, during the preceding year, by the assembly of Virginia, as an additional agent, with Bennett and Matthews, for the management of the affairs of that province in England. In the special instructions of this assembly to Mr. Digges, they directed him, "to get address to his *royal* highness the lord protector, and to assure his highness, that, according to his letter, they had not interested themselves in the business betwixt Maryland —*—, and had been unconcerned in their quarrel from the beginning until this time, and so should continue according to his highness's direction in that letter." Mr. Digges, on his arrival in England, most probably retained in remembrance this important sentiment of the assembly. It is possible also, that he might, from other causes not now known, have entertained a personal friendship for lord Baltimore.† However that might have

* Meaning, "betwixt Maryland" and the Puritans settled at Providence on the Severn. It would appear from this, and the exclusive application from the term *Marylanders* to the inhabitants of St. Mary's county at the time of the battle on the Severn, as before mentioned, and from other circumstances, that the Puritans on the Severn did not acknowledge themselves as being within lord Baltimore's province of Maryland, but as being either a part of Virginia or a distinct colony by themselves.

† The families of Calvert and Digges were subsequently allied by intermarriages; but they do not appear to have been so at this time.

been, it is certain, that Mr. Digges, after his arrival in England, which must have been in the spring of 1657, interested himself much in favour of an accommodation with lord Baltimore. This circumstance is acknowledged with some emphasis in the body of the agreement itself, as will presently be seen. All things in England now looking unfavorably for the cause of the Puritans of Maryland, especially as Cromwell had been just offered both the crown and title of *king* of England, which he reluctantly rejected, but had re-accepted that of *protector* with many additional powers and prerogatives, and from thenceforth paid much court to the old nobility of England, establishing anew the house of lords as a branch of the legislature, Mr. Bennett, who appears to have been a zealous Puritan and a faithful servant of those in Maryland, was under a necessity of making the best terms he could with lord Baltimore. His lordship, in prudence also, adopted a similar disposition. Accordingly, on the 30th of November, 1657, without doubt after many interviews and discussions on the subject, an agreement was entered into and signed by lord Baltimore and the aforesaid agents, Bennett and Matthews; of which the following is a copy.

CHAPT.
VI.
1657.

“Articles of agreement between the lord proprietary of this province and Richard Bennett, esqr., which are as followeth, viz.

“Whereas there have bin of late, viz. in the year 1652, and since, some controversies between the right honorable Cecilius Lord Baltimore lord and proprietary of the province of Maryland and Richard Bennett, esqr., and other people in Maryland nowe or late in opposition to his lordship’s government of the said province upon which have unhappily followed much bloodshed and great distempers there, endangering the utter ruine of that plantation if not timely prevented, and whereas upon complaint made thereof by the said lord Baltimore the matter was by his highness the lord protector referred first to the lords commissioners, Witlocke and Widdrington, whose report thereof was afterwards referred by the councill to the commissioners for trade, who made their report also thereupon to his highness and councill, but they by reason of their great affaires having not as yett leisure to consider of the said report, the same remains yett undetermined, and in the mean time the inhabitants of the said province remaine in a very sad distracted and unsettled condition by reason of the said differences touching the said govern-

CHAPT. VI. 1657. ment there, therefore the said lord Baltimore, upon a treaty with the said Richard Bennett and colonel Samuel Matthews, occasioned by the friendly endeavours of Edward Digges, esqr., about the composure of the said differences, and in pursuance of the said report of the said committee for trade, dated 16th of September, 1656, hath for the good of the inhabitants of the said province condescended and is willing to do as followeth, viz., in case the said people in opposition to his lordship's government there as aforesaid, shall forthwith, upon notice hereof, from his lordship's governor or secretary there, for the time being, cease and forbear for the future, from executing any act or power pertaining to government and administration of justice within the said province, and shall deliver up to his lordship's said governor or secretary aforesaid, all records of the said province now in their power, and also his lordship's former great seale of the said province, if it be found or procured by them, and shall for the future give all due obedience and submission to his lordship's government there, according to his pattent of the said province, that then his lordship doth promise :

“*Imprimis*, that no offences or differences, which have arisen in Maryland upon and since the said controversies there, shall be questioned by his lordship's jurisdiction there in the said province, but shall be left to be determined by such ways and means as his highness and the councill shall direct.

“2. *Item*, that the said people in opposition as aforesaid shall have patents from his lordship for such lands in the said province as they can claime due unto them by his said lordship's conditions of plantation, and in the same manner and with all the same rights as they might have had if the said controversies and differences had not happened, any former order, instructions, proclamations or any other thing proceeding from the said lord Baltimore, or any deriving any authority from him to the contrary hereof in any wise notwithstanding, provided that they and every of them respectively who shall desire the same, doe sue out their said patents for the said lands, within nine months after notice hereof given them by his lordship's said governor or secretary there for the time being, and that before they have theyr pattents they take the oath of fidelity there to his said lordship with such alteration in it as is mentioned in the said report of the committee for trade, and shall pay or satisfy his said lordship's receiver generall there for his lordship's use, all arrears of

rent due to his said lordship from the time they first entered upon the said lands respectively, and due fees to his said lordship's secretary, surveyor, and other officers there as other inhabitants ought to doe, and according to his said lordship's conditions of plantation for the said province.

CHAPT.
VI.
1657.

"3. *Item*, that such of the said people in opposition as aforesaid, who shall desire to remove themselves or estate from Maryland, shall have free leave and a year's time so to doe.

"4. Lastly, the lord Baltimore doth promise, that he will never give his assent to the repeal of a law, established heretofore in Maryland by his lordship's consent, and mentioned in the said report of the committe for trade, whereby all persons, professing to believe in Jesus Christ, have freedom of conscience there,* and doth faithfully promise upon his honour to observe and performe as much as in him lies the particulars above mentioned; and his lordship doth hereby authorise and require his lordship's governor and all other his lordship's officers there to give assurance to the people of their due performance hereof. In witness whereof, the said lord Baltimore hath hereunto sett his hand and seale the 30th day of November, 1657.

C. BALTEMORE.

SAMUEL MATTHEWS.

"Signed, sealed, in the presence of Edward Diggs, John Harris, Richard Chandler, A. Stanford, William Barrett.

"This is the paper which was mentioned in my letter to captain William Fuller and being of the same date with this.

Ri: BENNETT."† :

The signature of Mr. Bennett, as above, is exactly as it now appears on the record. Although it does not seem to have been strictly in legal form as a *party* to the instrument of agreement, yet, as his name is mentioned in the body of the instrument of writing as a *party* to the same, we must suppose, that his mode of signature was then deemed sufficient. It appears from thence, however, that immediately on the execution thereof, on the same day, he dispatched a letter to captain Fuller, the Puritan governor of Maryland, apprising him of these proceedings. Governor Fendall also, who was now in England, must have soon

* This alludes to the act of assembly of 1649, ch. 1, entitled "an act concerning religion," herein before stated.

† Taken from the book in the council chamber, entitled, "Council, &c. HH 1656 to 1668," p. 10.

CHAPT. afterwards embarked for Maryland; taking with him, not only
 VI: an authenticated copy of this important agreement, but also special
 1657. instructions from the lord proprietary to be observed in future by his governor and council in Maryland. These instructions bear date the twentieth day of November, 1657, ten days prior to the date of the agreement herein just before stated; and that no error in this respect has here occurred by the inattention of the transcribers of those instruments into our records or otherwise, may be fairly inferred from the remarkable circumstance, that these instructions make no mention of or reference to the *agreement*; which they would necessarily have done, had they not been drawn up and delivered to governor Fendall prior to that agreement, as their date purports. If such was the case, it seems to indicate, that his lordship now entertained a thorough conviction, that his proprietary authority would be speedily and peaceably restored to him.

In these instructions his lordship authorises his lieutenant of the province for the time being to discharge any one of his council there, who should desire the same; and moreover, with the approbation of any three of the council, of whom his brother Philip Calvert was to be one, to discharge any one from being a councillor, who should refuse to act as such or give attendance at the provincial courts without good excuse.

Lord Baltimore's instructions to his governor for the time being.

Also, after stating that he had now sent to the province a new great seal by captain Josias Fendall, his lieutenant there, to whom the custody thereof was now committed as keeper of the great seal, his lordship authorises him to pass grants or patents of lands, as heretofore used, to any persons whatsoever who should be entitled thereto under his lordship's conditions of plantation; although such grantee did not make his claim thereof in due time or had since forfeited his right to the same; which grants or patents were to be attested by his lordship's secretary, Mr. Philip Calvert, before they should be deemed valid; provided always, that such grantee or patentee do take the *oath of fidelity* to his lordship and his heirs, mentioned in his last conditions of plantation for the province,* with such alteration in the said oath as was agreed unto by his lordship, and directed in the report of the committee for trade, dated the 16th of September, 1656; a

* The Conditions of Plantation, here referred to, appear to be either those of the twentieth of August, 1648, which see in note (LXIX.) or those of the second of July, 1649, (see before, p. 375,) both to the same purport as to the oath of fidelity.

copy of which report his lordship had before sent to the province together with his instructions of the 23d of October, 1656.* To this same clause in these instructions his lordship thought it proper to annex two other provisoes; the first of which, being of some *political* importance, may be here stated:—viz., “Provided also, that such person or persons, who had acted or abetted any thing against his lordship’s lawful right and jurisdiction in this province, do make and subscribe in the presence of his lordship’s lieutenant and principal secretary of the said province for the time being, or one of them, a *submission*, of the forme hereunto annexed, to remaine on record here, or such other submission as his lordship’s lieutenant and secretary, or either of them, in the absence of the other out of the said province, shall think fit, before any such grant or patent of any land in the province be passed under his lordship’s great seal unto them respectively as aforesaid.”† This form of *submission* was subsequently confirmed by the agreement of the 20th of March following, and further confirmed by an act of the next session of assembly, (April, 1658,) and substituted in lieu of any oath of fidelity before mentioned.

CHAPT.
VI.
1657.

The third clause related to a private grant of ten thousand acres of land to Edward Eltonhead, esqr.; which, although it is expressed to have been “upon certain terms and conditions of a certain number of persons to be transported by the said Edward Eltonhead within a certain time,” yet, it is probable, that this Mr. Edward Eltonhead was a near relative (possibly the son) of Mr. William Eltonhead, who had been shot by the Puritans of Severn after the battle of 1655, as before stated, and that his lordship might have been more particularly anxious to reward him on that account.

The fifth clause authorised the grants of lands to *foreigners* in the same manner as if they had been of *British* or *Irish* descent.

The sixth and last clause seems to indicate some little distrust entertained by his lordship, of the fidelity of his present lieutenant or governor of his province, Fendall. It states, that, whereas his lordship had authorised, in these instructions, his lieutenant

* See before, p. 541–2, and note (LXXXIX.); but as these instructions, as before stated, are not now entire upon our records, the “alteration” alluded to does not appear.

† The reader will see this form of *submission*, with the instructions, presently referred to.

CHAPT. ant to act and do several things with the advice and approbation
 VI. of his lordship's brother Philip Calvert, esqr., he herein provides,
 1657. that in case the said Philip Calvert should die, or by absence out of the province or otherwise should be disappointed of acting there, the said Josias Fendall, or any other his lieutenant of the said province for the time being, should act and do the same things with the advice and approbation of captain *Thomas Cornwaleys*, esqr., in lieu and stead of the said Philip Calvert, esqr. The reader will greet with pleasure the return of this venerable old primitive settler of the province upon the stage of our provincial affairs. He had often before stepped forth in the hour of danger, and by his prowess and his prudence rescued our infant colony from the brink of ruin. From a similar motive, he now without doubt again came forward, to tender his services to his noble friend, the proprietary of the province.*

1658. After a winter voyage across the Atlantic, governor Fendall
 Governor Fendall returns to Maryland. arrived in Maryland, on Friday, the 26th of February, 1657, (O. S.) when Mr. Barber surrendered up to him his authority as governor. On the next day, a council was held at St. Mary's (the old city, probably,) at which were present, the lieutenant (Mr. Fendall,) Mr. Secretary, (Philip Calvert,) and captain William Stone; when the before mentioned articles of agreement between the lord proprietary and Richard Bennett, esq. were published.† Upon the reading of which, the lieutenant, Mr. Fendall, immediately dispatched letters to captain William Fuller, Mr. Richard Preston, and the other gentlemen, composing the government at Providence on the Severn, desiring them to give him, Mr. Secretary, and captain Thomas Cornwaleys, a meeting at St. Leonard's creek in Patuxent river, upon the eighteenth of March following, in order to the performance of the articles of agreement before mentioned, a copy of which was sent to them with the aforesaid letters.

*See these instructions, of the 20th of November, 1657, at large in note (XCII.) at the end of this volume.

† So stated in the book entitled, "Council, H H, 1656 to 1658," p. 10. It may be here noted, that there are grounds to suppose, that no printing press had as yet been established in the province, so that the publication of these articles of agreement must have been made, as that of proclamations and other public documents had heretofore been done in the province, by causing the sheriff of the county to read the same publicly at the seat of justice or other public place, and posting the same at the like places for the inspection of the people. This is the mode, by which statutes were published in England in the early period of its history.

On the appointed day, the eighteenth of March, the three gentlemen last mentioned attended in council at St. Leonard's creek, agreeably to appointment; but wind and weather not permitting captain Fuller and the rest from Providence to arrive at the appointed time, it was resolved by governor Fendall and the other two in council, on the part of the lord proprietary, that they should wait till Saturday the 20th of March.

On the twentieth of March, captain William Fuller, Mr. Richard Preston, Mr. Edward Lloyd, Mr. Thomas Mears, Mr. Philip Thomas, and Mr. Samuel Withers, arrived, but the day being far spent, and Sunday (the next day) not fit to treat of business, all further treaty was put off till Monday the 22d.

On the twenty-second of March, both parties having met, the lieutenant (Mr. Fendall) read the before mentioned articles of agreement and demanded the records, the great seal, and the whole government to be resigned up into his hands, and in the name of the lord proprietary, promised a ratification of the said articles under the great seal of the province. The before mentioned instructions of his lordship to his lieutenant general were then also read. It appears from the record of the proceedings of this day, that captain Fuller and his council were not perfectly content with these articles of agreement entered into between lord Baltimore and Mr. Bennett, particularly as to the first article thereof, which stipulated, "that no offences or differences, which had arisen in Maryland upon and since the said controversies there should be questioned by his lordship's jurisdiction there, but should be left to be determined by such ways and means as his highness and his council should direct." Not caring to trust to the future decision of his highness, the lord protector, they therefore required an additional agreement containing a general clause of indemnity on both sides, for any act made or done in the transactions of the affairs of the province since the first of December, 1649, to the day of the date. Such a clause of "indemnity on both sides" was at first objected to by governor Fendall and his council, on the ground that it would be "an admission of a necessity of pardon, and consequently an implication of guilt in his lordship's officers; but" (as the record further states) "upon consideration, that some of his lordship's officers needed an indemnity for breach of trust," they assented to a clause for that purpose.

The second clause thereof also, as to the oath of fidelity, was

CHAPT.
VI.
1658.

Negotiations between the proprietary and puritan governors, for a surrender of the province to the former.

CHAPT. VI. strongly opposed by captain Fuller and his council. The proprietary party contended, that an oath of fidelity was of common right due to any lord of [a palatinate government,]* and ought not to be utterly waived. They, however, agreed, that an article should be drawn up, waiving it as to persons *then* resident in the province, but to stand in force as to all others.

1658.

The Puritan party further required also, that certain clauses should be inserted in a new agreement, for the confirmation of all past proceedings done by them in their assemblies and courts of justice since the year 1652, the time of the first "reducement" of the province; and lastly, they insisted, that none of them should be disarmed, so as to be left to the mercy of the Indians. After considerable debate upon and discussion of these proposed articles, during this day and the next the 23d, they were at last acceded to by the proprietary party, and directions given, that they should be prepared and engrossed against the next morning.

The final agreement and surrender in consequence thereof.

On the twenty-fourth, "the governor and council met, and the articles were read, fairly engrossed in parchment, to the commissioners," (captain Fuller and his council,) "which being to the content and peace of all parties, were by the governor and—† signed; and afterwards in the face of the whole people sealed, as follows :

"Articles agreed upon and consented to by captain Josias Fendall, lieutenant of this province of Maryland, and Philip Calvert, principal secretary of the same, for and in behalfe of the right honourable Cecilius lord and proprietary of the provinces of Maryland and Avalon, &c., upon the surrender of the government of the said province to his lordship's said officers by captain William Fuller, Mr. Richard Preston, &c. this 24th day of March, in the yeare of our Lord, 1657.

"*Imprimis*, That all ministers of justice and officers military, with all persons whatsoever, be and remain indemnified on both sides, and freed from any charge or questioning for any act or passage made or done in the transactions of the affairs of this

* Instead of the above words in brackets, there is a blank in the record. I have, however, to make sense of the passage, ventured to fill it up as above.

† This blank is so in the record. It would appear from the attestation, that these articles were "signed" only by governor Fendall and Mr. Secretary Calvert. The instrument might have been considered as an *act of state*, emanating from the legitimate authority of the province—the governor and secretary, and not requiring the signature of captain Fuller, or any of his party.

province since the first of December, one thousand six hundred and forty-nine, to the day of the date above written, without further consideration of restitution or satisfaction to be required or made on either side. CHAPT.
VI.
1658.

"2. That all sheriff's and clerk's fees, as well as secretary's fees, which sheriffs, clerks, and secretaries, have been made since the year 1652, shall be paid their due fees and arrears thereof; and that all levies and taxes, and arrears of the same, raised and levied by the two last assemblies, viz. in the years 1654 and 1657, and in every county their respective county-charge, be fully satisfied and paid to whom they are appointed.

"3d. That no person whatsoever within the province shall by reason of any act or passage made or done, in relation to the late alteration of the government made in the year one thousand six hundred and fifty-two, be deemed, or hereafter be made, incapable of electing or to be elected to all future assemblies.

"4th. That no act or orders of assemblies or courts within this province, made or past since the year one thousand six hundred and fifty-four, in cases of *meum et tuum*, shall be declared void by pretence of irregularity of the power of government established in the year one thousand six hundred fifty and four.

"5th. That all such as shall, within six months after the date hereof, come or send to the secretary's office, and there, according to conditions of plantation, make their right appear, shall have warrants granted for so much land as they shall make appear to be due, and the same land by them entered upon, by virtue of *caveats* entered in county or provincial courts:—Provided, that such lands be not formerly taken up by any lawful warrant from his lordship's other officers, nor reserved for his lordship's uses.

"6th. That the oath of fidelity shall not be pressed upon the people now resident within this province, but in stead and place thereof, an engagement be taken and subscribed in manner and form following, viz:

"I, A. B., do promise and engage to submit to the authority of the right honourable Cecilius lord Baltimore and his heirs, within this province of Maryland, according to his patent of the said province, and to his present lieutenant and other officers here by his lordship appointed, to whom I will be aiding and assisting, and will not obey or assist any here in opposition to them.

CHAPT.
VI.

1658.

"7th. Lastly, that no person whatsoever within this province shall, by any colour or suggestion, be disarmed or dispoyled in his armes or ammunition, (and thereby, consequently, left to the cruelty of the Indians,) unless such person be proved to bear armes to an hostile intent, or contrary to the usual and allowable customes of the country for such man's defence.

"In witness whereof, we the said captaine Josias Fendall, lieutenant of this province of Maryland, and Philip Calvert, principal secretary of the same, have set our hands and fixed his lordship's great seale for this province."*

These articles being signed, sealed, and delivered to the "commissioners," (captain Fuller and his council,) "they" (the "commissioners,") with many others, subscribed the engagement, and delivered the record thereof to Philip Calvert, secretary of state.

At the same time the governor's commission† was publicly read and proclaimed, and writs issued immediately for an assembly to be held at St. Leonard's,‡ on the 27th of April following.

Thus, after a lapse of six years, after his lordship had been deprived of the government of his province, we see him again restored to the full enjoyment thereof beyond any probable expectation. But the same coincidence of circumstances which was now in the mother country, tending to a restoration of the exiled royal family to the throne of England, had also contributed to bring about a more speedy restoration of the lord proprietary to his province. Although Cromwell had just rejected most unwillingly the *title* of king, yet he manifested now towards the close of his life an anxious desire to reinstate the kingdom in all its ancient political institutions; (particularly in the re-establishment of a house of lords;) provided, that he could retain the hereditary sovereignty. It was observed, that he paid great court to the ancient nobility of the realm. With this spirit and temper, it is highly probable, that Bulstrode Whitlocke, esq., and sir Thomas Widdrington, both lawyers of note, and commissioners of the great seal for the office of chancellor, were actuated, when they made their report on the first reference

* Taken from the Council book, *Liber*, H. H., 1656 to 1663, so far as they have not been erased and torn out. The defective parts of that record have been supplied by the recital of the same articles in the act of assembly of 1658, ch. 1.

† See this commission in note (LXXXVII.) before referred to.

‡ Meaning, most probably, *St. Leonard's creek*, where the preceding negotiations had taken place.

of the Maryland disputes to them by Cromwell; and from them it is probable, that the committee for trade had taken their favorable sentiments also in behalf of lord Baltimore's proprietary rights. They saw no inconsistency with or obstruction to the liberties and privileges of the freemen of Maryland under a proprietary government, agreeably to lord Baltimore's patent. He had been at great expense in planting the colony, and it would have been injustice, particularly at that early period after the settlement thereof, to have deprived him of a just remuneration for those expenses. He had always allowed, from the first settlement of the colony, a full enjoyment of all that fanciful *religious* liberty, which was then pretended to be the order of the day. As this impolitic conduct of his had, without doubt, brought upon him the internal commotions and insurrections within his province, so also on the contrary with some wise and liberal statesmen in England, into whose disposal his cause most fortunately happened to fall, it must have operated powerfully in procuring his restoration.

CHAPT.
VI.
1658.

NOTES AND ILLUSTRATIONS.

NOTE (I.) p. 24.

The following state paper is copied from Chalmers's Annals, ch. IX. note, 18, who publishes it as—"From Maryland pap. vol. 1, bundle C.;"—which purports to be from *papers* still extant in the plantation office, England.

"At the Star Chamber :—3d July, 1633.

PRESENT,

Lord Keeper,	Earl Danby,
Lord Privy Seal,	Lord Viscount Wentworth,
Lord High Chamberlain,	Lord Viscount Falkland,
Earl Dorset,	Lord Cottington,
Earl Bridgewater,	Mr. Secretary Windebank.

"Whereas an humble petition of the planters of Virginia was presented to his majesty, in which they remonstrate, that some grants have lately been obtained of a great portion of lands and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments, and a bar put to that trade which they have long since exercised towards their supportation and relief, under the confidence of his majesty's royal and gracious intentions towards them, as by the said petition more largely appeareth: Forasmuch as his majesty was pleased, on the 12th of May last, to refer to this board the consideration of this petition, that, upon the advice and report of their lordships such orders might be taken as to his majesty might seem best: It was thereupon ordered, on the 4th of June last, that the business should be heard on the second Friday in this term, which was the 28th of the last month, and that all parties interested should then attend; which was accordingly performed; and their lordships, having heard the cause, did then order, that the lord Baltimore, being one of the parties, and the adventurers and planters of Virginia, should meet together betwixt that time and this day, and accommodate their controversy in a friendly manner, if it might be, and likewise set down in writing the propositions made by either party, with their several answers and reasons, to be presented to the board this day; which was likewise accordingly done. Now, their lordships, having heard and maturely considered the said propositions, answers, and reasons, and whatever else was alledged on either side, did think fit to leave lord Baltimore to his patent, and the other parties to the course of law, according to their desire. But, for the preventing of farther questions and differences, their lordships did also think fit and order, that, things standing as they do, the planters on either side shall have free traffic and commerce each with the other, and that neither party shall receive any fugitive persons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, lastly, that they shall sincerely entertain all good correspondence, and assist each other on all occasions, in such manner as becometh fellow subjects and members of the same state."

The preceding document is published also in Hazard's Collections, vol. 1, p. 337; but the copy there varies a little in some words and expressions from that in Chalmers's Annals; the most material passage of which is the following; instead of—"their lordships did order, that, *things standing as they do*, the planters on either side shall have free traffic," &c., as above; in the copy in Hazard's Collections it is thus;—"their lordships did also think fit and order, that *things stand as they do*; the planters on either side shall have free traffic," &c.

It may not be improper to subjoin here also a remark of Chalmers, upon the preceding paper. "The wisdom as well as equity of the decisions of the privy council, with regard to Maryland, may be attributed to the presense of lord Strafford" (lord Viscount Wentworth,) "who was the friend of Sir George Calvert, and extended his protection to the son, because he recollected the good offices of the father." The reason assigned here by Mr. Chalmers for the foregoing decision does not appear to be altogether satisfactory. As the order seems at this day to have been clearly founded in right and justice, I would rather attribute the decision to the "presence" of Sir *Thomas Coventry*, the "lord keeper," than to that of lord Viscount *Wentworth*, whose political character, as to consistency, was certainly equivocal, and personal partiality is not an honest ground for the decision. According to lord *Clarendon*, (Hist. of the Civil Wars, p. 15, folio edit.) Sir *Thomas Coventry* was one of the ablest lawyers of his time,—had successively filled the offices of solicitor and attorney general, "with great abilities and singular reputation of integrity," and in his office of lord chancellor, (or "keeper" of the great seal, in which he appears on this occasion) this historian further adds,—"*Sure justice was never better administered.*" Henry Montague, earl of Manchester, the "lord privy seal" above mentioned, had also acted with ability in the highest stations of the law; having succeeded lord *Coke*, in the year 1616, as lord chief justice of the court of king's bench. Lord *Clarendon* observes also of him, that "he was full of integrity and zeal for the Protestant religion." It is true, that lord *Cottington* and secretary *Windebanke*, especially the latter, are admitted to have been great patrons of the English Catholics. But their influence in the council could have little weight with men of the preceding characters.

NOTE (II.) p. 28. ¶

This Patowmack-town was the same Indian town as that called Patowomeke in captain Smith's History of Virg. vol. ii. p. 177, when he, as the first discoverer, first explored the Patowmack river in the year 1608; an account of which has been before given in sec. VII. of the introduction to this history. As an Indian town, it must have been, at this time, when governor Calvert visited it, one of considerable population and importance, and had either given to the river or received therefrom the name of *Patowomeke*; for, according to Smith, in the year 1608, it could then turn out two hundred warriors; which, according to Mr. Jefferson's conjectural proportion of warriors to inhabitants, at that period of time, to wit, as three to ten, would indicate a population of at least six hundred men, women, and children. Having experienced but little interruption from Europeans in the lapse of twenty-six years between Smith's first visit to them in 1608 and this by governor Calvert in 1634, their numbers were not probably now much diminished. Such visits, as had been in the intermediate time made to them by the English, were for the most part friendly, except in one instance. In the year 1610 captain Argall was sent by the then governor of Virginia, (lord Delaware,) during a time of great scarcity there, bordering on a famine, to Patowomeke "to trade for corne: where finding an English boy, one Henry Spilman, a young gentleman well descended," (as stated by Smith in his Hist. vol. ii. p. 2, and 6,) "and preserved from massacre by the kindness of

Pocahontas," who had placed him for security with the Patowomekes, captain Argall, through means of this lad, "had such good vsage of those kinde salvages, that they fraughted his ship with corne, wherewith he returned to *James-towne*." It was here also, that captain Argall, on another trading voyage for corn, in the year 1612, found means, through the treachery of Japazaw, the then king of the Patowomekes, whom he bribed with a brass kettle, to decoy Pocahontas herself, who was then in that neighbourhood, on board of his vessel, and carried her with him to James-town, where she was not long afterwards married to Mr. John Rolfe, and peace with Powhatan thereby procured. *Ibid.* p. 14. It appears also, that this place, and the country round about it, must have been, even under the imperfect agriculture of Indians, uncommonly fertile: for, in the year 1619, Japazaws, the king, went to James-town, "to desire two ships to come trade in his river." A vessel was accordingly sent under the command of captain *Ward* for that purpose, but on his arrival there, finding that "the people there dealt falsly with him, hee tooke 800 bushels of corne from them perforce." *Ibid.* p. 39. About the time of the great massacre in Virginia, in the year 1622, captain Raleigh Croshaw, a man of some note among the Virginia settlers at that time, having gone to the Patowmack with captain Spilman, the same person, as it would appear, who was a lad there in 1610, on a trading voyage, among other places on that river visited this town of the Patowomekes, and was there persuaded by the king, (perhaps Japazaws, before mentioned,) to remain with him, and "be his friend, his countenancer, his capitaine, and director against the *Nacochtanks* and *Moyaons* his mortal enemies." To which Croshaw agreed, persuading one *Elis Hill*, another Englishman, to remain with him. Croshaw's principal design appears to have been to form a settlement here, and to carry on a trade with the Patowomekes for his own private gain. Not long after he had been here, captain *Hamar* arrived from James-river in a vessel to trade for corn, and applied to the king for that purpose. "The king replied hee had none, but the *Nacochtanks* and their confederates had, who were enemies both to him and them. If they would fetch it, he would give them 40 or 50 choice Bowmen to conduct and assist them." These *Nacochtanks* were seated on the Maryland side of the Patowmack, in Prince George's county, just below the mouth of the eastern branch. The offer of this sanguinary and revengeful king was very improperly embraced by the English, and a party of them, conducted and aided by the savages was sent by Hamar. They attacked the *Nacochtanks*, and, "after a long skirmish with them," killed eighteen of them, and drove the rest out of their town, which they plundered, and took away with them what they wanted, "and spoiled the rest." Hamar returned to James-town, leaving at Patowomeke the additional number of four men, with Croshaw and Hill. The late massacre, however, soon created in these six men some alarms, and they, with the assistance of some of the savages, built a fort, "in a convenient place," near to the Patowomekes town. Croshaw thus securely settled, as he thought, sent, by another vessel from James town which came to trade in Patowomeke, a message to the governor and council of Virginia, that "if they would send him but a bold shallop, with men, armes, and provision for trade, he would provide them by the next harvest, (in the autumn,) "corne sufficient, but, as yet, it being but the latter end of June, there was little or none in the country." In consequence of this message, captain *Madyson*, with two vessels, "and some six and thirtie men," was sent to Croshaw. Madyson, after his arrival at Croshaw's fort, proceeded further up the river to the same Indian town, before mentioned, called, *Moyaones*; situated in what is now Prince George's county, in Maryland, about six miles above Mount Vernon; "where hee got provision for a moneth, and was promised much more; so he returned to Patowomeke; but, not liking so well to live amongst the salvages as Croshaw did," (who had by this time returned back to James-town,)

"he built him a strong house within the fort, and was well used by the salvages." Madyson, however, seems to have been a more timid man than Croshaw, and, in the opinion of Smith, was "too jealous," and entertained improbable suspicions, of the treachery of the king of the Patowomekes. Upon some suggestion made to him, that this king was secretly in league with Opechancanough, who had dictated the massacre in the preceding spring on James river, to murder Madyson and his party now at Patowomeke. Madyson, having decoyed the king and his son into his strong house within his fort, set a guard of men over them, then with the rest of his men sallied out upon the town of the Patowomekes, and most cruelly and unjustifiably "slew thirty or forty men, women, and children;" the remainder of them escaping out of the town. He then returned to his fort, "taxing the poore king of treason, who denied to the death not to know of any such matter, but said,—*This is some plot of them that told it, onely to kill mee for being your friend.* Then Madyson willed him to command none of his men should shoot at him as he went aboard, which he presently did, and it was performed; so Madyson departed, leading the king, his sonne, and two more to his ship, promising when all his men were shipped, he should returne at libertie; notwithstanding he brought them to *James towne*, where they lay some daies, and after were sent home by capitaine *Hamar*, that tooke corne for their ransome." *Smith's Hist.* vol. ii. p. 86-88. It was to have been expected, that this unnecessary cruelty towards the Patowomekes would have excited their revenge on some future occasion. Accordingly, in the latter end of the year 1622, or in the beginning of 1623, when captain Spilman, before mentioned, who had lived so long with the Indians, and had been in part brought up by them, was sent from James river "to trucke in the river of Patowomeke," without regarding the former acquaintance and knowledge they had of him, they murdered him and a party of one and twenty men, who had gone ashore with him from their vessel at some place "about Patowomeke, but the name of the place they knew not." The remaining part of the crew, five in number, weighed anchor and returned home. All they could tell was,—that they heard a great noise among the savages on shore, and saw a man's head thrown down the bank, but how captain Spilman was surprised or slain they did not know. *Smith's Hist.* vol. ii. p. 95. It has been said, that this murder was committed by a tribe called the Pascoticons, and that governor Wyatt came shortly afterwards himself to the Patowmack and "took a severe revenge" on these Indians. *Burk's Hist.* of Virg. vol. i. p. 275. With these hostilities between the Virginians and the Indians on the Patowmack, all further traffic between them, prior to the arrival of governor Calvert, appears to have ceased, or no subsequent accounts thereof have reached us. It is probable, that Japazaw, the former king of the Patowomekes in 1623, was now dead, as the present Werowance, or king, was said to be an infant, who must have been either his son or his nephew; most probably the latter, agreeably to what is said to have been the Indian rule of descent as to their regal power. In either case it corroborates the opinion, entertained by some,—"*that the dignity of office of Sachem was hereditary,*" which has been denied by others. But, it is most probable, that this infant Werowance, or Sachem, was Japazaw's sister's son; for, although it appears from what has been before mentioned, that he had a son of his own, yet the descent to his nephew would be more in conformity to what is stated by Smith, as to the manner of government with the Virginia Indians, exemplified by him in the case of Powhatan,—"*whose kingdoms,*" he says, "*descended not to his sonnes nor his children, but first to his brethren, whereof he hath 3, namely, Opitchapan, Opechancanough, and Catataugh,* and after their decease to his sisters. First to the eldest sister, then to the rest, and after them to the heires male or female of the eldest sister, but never to the heires of the males." The construction of this sentence made by Mr. Thompson in his note (5) to Jefferson's

Notes,—that these names “were appellations designating the tribes in the confederacy,—that those persons were not Powhatan’s real brothers, but the chiefs of different tribes, and that the Sachem or chief of the tribe seemed to be by *election*,”—appears to be repugnant to the latter part of the above quotation from Smith, which Mr. Thompson has not fully stated, having omitted the material word—“heirs,” &c., which, in the English language, here used by Smith, always intimates *inheritance* by blood. This rule of inheritance, spoken of by Smith as to Powhatan, is recognized also by Beverly, (who wrote when many tribes of Indians were still known as then existing in Virginia,—see his *Hist. of Virg.* p. 163,) as a general rule of inheritance among them as to their regal power. This he attributes to their *jealousy* of their wives, “always respecting the descent by the female as the surer side.” The same rule of inheritance is recognized also by William Penn, as prevalent with the Indians of Pennsylvania, when he first made his settlement there, for which he has assigned the same reason as Beverly. See Proud’s *Hist. Pennsylv.* vol. i. p. 257.

NOTE (III.) p. 30.

It said by Chalmers in his *Annals*, (ch. ix. p. 207,) where he speaks of the arrival of the Maryland colony, that “animated by very different principles, Calvert, their leader, pursued a very different conduct from those who first planted the shores of James river. *He purchased the rights of the aborigines for a consideration* which seems to have given them satisfaction; and with their free consent, in the subsequent March, he took possession of their town, which he called Saint Mary’s. Prudence as well as justice dictated the continuation of this salutary policy, with regard to that people; and, having carefully cultivated their friendship, he lived with them on terms of perfect amity, till it was interrupted by the interested intrigues of an individual,”—William Clayborne.

As philanthropists have been excessively clamorous in the praises of William Penn for his ostentatious purchase of the lands of the aborigines, particularly at the time of his supposed treaty with the Indians under the great elm at Shackamaxon, (so brilliantly illustrated by the pencil of his Britannic majesty’s historical painter,) it is here thought, that the conduct of Leonard Calvert, on a similar occasion, will not shrink from a comparison with that of William Penn. It will not be fully admitted, that William Penn or any other European colonist, or even the United States at this day, can with perfect honesty and integrity *purchase* the lands of the aboriginal natives of America; for several reasons;—first, it is not a clear proposition, that *savages* can, for *any consideration*, enter into a contract obligatory upon them. They stand by the laws of nations, when trafficking with the civilized part of mankind, in the situation of *infants*, incapable of entering into contracts, especially *for the sale of their country*. Should this be denied, it may be then asserted, that no *monarch* of a nation, (that is no *sachem*, chief, or head men, or assemblage of sachems, &c.) has a power to transfer by sale the country, that is, the soil, of the nation over which they rule. But neither did William Penn, make, nor has any other European since made, a purchase of lands from any tribe or nation of Indians through the agency of any others than their sachems or head men; who certainly could have no more right to sell their country, than any European monarch has to sell theirs. But should it be contended, that savages are capable of entering into contracts, and that their sachems have a power to transfer by sale the country of the people over whom they rule, it may be safely asked,—what could William Penn, or at least what did he give, which could be considered, in any point of view, as a consideration or compensation to those poor ignorant aborigines for their lands? If we are to follow Mr. West’s *imagination*, (in his celebrated picture of “Penn’s treaty with the Indians;”) for, history recognises no such treaty, and the late biogra-

pher of William Penn, (Clarkson,) fairly acknowledges, that "in no historian could he find any account of it;" but from "traditions in Quaker families," and "relations in Indian speeches," it might be inferred, that there was such a treaty; if then, the pencil of the artist is correctly warranted by "tradition," William Penn gave nothing more than some English *broad cloth*, or perhaps some beads or other trinkets, which might have been contained in the trunk displayed in the fore-ground of the picture, for all the lands, on which he built his city, including also a large portion of his province; and this he seems to have been induced to do, not from his own original perception of the justice of the thing, but, as he acknowledges in his letter to the lords of the council composing the committee of Plantations, dated August 14th, 1683, "that he might exactly follow the *bishop of London's* counsel, by buying, and not taking away, the native's land." (See this letter at length in Chalmers's *Annals*, ch. xxi. note 38.) Now, the presents of Leonard Calvert really seem to have been of greater value; for, besides *broad cloth*, history says, that he gave them "axes and hoes;" thereby endeavouring to introduce among them, as it were the first rudiments of civilization—the implements of agriculture. With this, it seems, they were as well satisfied to give up the lands of St. Mary's, as the Indians of Shackamaxon were to give up those where Philadelphia stands.

The foregoing remarks would, perhaps, not have been made, had they not been drawn forth by a part of a speech, which the before mentioned biographer of William Penn has dressed up for him, on the occasion of this celebrated treaty, entirely from "tradition," as he acknowledges, in which he makes him to say to the Indians;—"that he would not do as the *Marylanders* did, that is, call them children or brothers only; for, often parents were apt to whip their children too severely, and brothers sometimes would differ: but he should consider them as the same flesh and blood with the christians, and the same as if one man's body were to be divided into two parts." It is to be observed, that Penn had then but a few days prior to this supposed treaty returned from Maryland, whither he had gone on a visit to Charles, lord Baltimore, son and heir of Cecilius, to consult about the boundaries of their respective provinces, and where he had been "very kindly received, not only by his host, but by the principal inhabitants of the province." Setting aside this ungrateful return for the hospitality of the *Marylanders* just shewn to him, and notwithstanding these proprietaries could not agree about their bounds, there seems to have been, in the above mentioned insinuation, some small want of generosity, if not of humanity, in endeavouring to instil into the minds of the Indians prejudices against the *Marylanders*, who were certainly as much of "the same flesh and blood with the christians," as the Indians or Pennsylvanians were. Had he excited the Indians to war upon the inhabitants of Maryland, as he appears to have endeavoured to do, it would certainly not have comported with his *pacific* principles of christianity. But, notwithstanding the boasted effects of this celebrated treaty, it is to these "whippings" given by the *Marylanders* to their children—the Indians, together with the similar usage of them by the inhabitants of New York and Virginia, that the Quakers of Pennsylvania owe their *existence* as a colony, until through their *pacific* principles they were obliged to surrender up the affairs of their province into other hands.

NOTE (IV.) p. 30.

It is proper here to inform the reader, that in a few days after the Maryland colony had left Point Comfort in Virginia, the governor and council of that province, on the 14th of March, 1633-4, held a consultation concerning the mode of conduct they were to observe towards the Maryland colony. The result of this consultation, as it is published by Chalmers, in his *Annals*, ch. ix. note 17, from Maryland Papers, vol. 1, bundle C. is here subjoined.

"PRESENT,

Sir John Harvey, governor,	Capt. Clayborne,	Capt. Tho. Purfry,
Capt. John West,	Mr. Wm. Farrer,	Capt. Jos. Bullock,
Capt. Sam. Matthews,	Capt. John Uty,	Capt. Wm. Perry.

Captain William Clayborne requested the opinion of the board, how he should demean himself in respect of lord Baltimore's patent, and his deputies now seated in the bay; for that they had signified to captain Clayborne, that he was now a member of that plantation, and therefore should relinquish all relation and dependence on this colony. It was answered by the board, that they wonder why any such question was made; that they knew no reason why they should render up the rights of that place of the isle of Kent, more than any other formerly given to this colony by his majesty's patent; and that, the right of my lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony. Nevertheless, in all humble submission to his majesty's pleasure, we resolve to keep and observe all good correspondence with them, no way doubting that they on their parts will not entrench upon the interests of this his majesty's plantation."

It is probable, that the discontents, which had been excited in Virginia, principally on account of lord Baltimore's charter, together with the foregoing manifestation of the opinions of a majority of the provincial council of Virginia thereon: occasioned the following letter from the committee of the king's council, in England, for the colonies, to the governor and council of Virginia, published in Chalmer's Annals, (ch. v. note 16,) from Virg. Ent. 1 v. p. 211.

"After our hearty commendations: we have thought fit to let you know, that his majesty, of his royal favour, and for the better encouragement of the planters there, doth let you know, that 'tis not intended, that interests, which men have settled when you were a corporation, should be impeached, that for the present they may enjoy their estates with the same freedom and privilege as they did before the recalling of their patents; to which purpose also, in pursuance of his majesty's gracious intention, we do hereby authorise you to dispose of such proportions of lands to all those planters, being freemen, as you had power to do, before the year 1625. Whitehall, 22d July, 1634.

Manchester, Kelley, E. Newburg, T. Coventry,
F. Cottington, T. Germini, F. Windebank.

To our loving friends, the governor and council in Virginia."

Although this letter was written subsequent to governor Hervey's visit to St. Mary's, and probably did not arrive in Virginia until the autumn of this year 1634, yet, as it appertains to the events of the present year, and serves to demonstrate, that no invasion of any *individual* right of any Virginian was intended by lord Baltimore's grant, it is inserted in this place.

NOTE (V.) p. 35.

Supplementary to the before mentioned events of the year 1635, an incident of that time, apparently trivial, but, being connected with an awful misfortune, which the state of Maryland seems to be destined to experience at some future day, demands some notice. In a memorandum, (recorded in p. 37, of the oldest land record book of the province of Maryland, marked No. 1,) relative to "rights of land," accruing to those, who should bring in persons to settle in the province, agreeably to the first "conditions of plantation," prescribed by the lord proprietary, mention is made, that "*Francisco a molato* was brought in by Andrew White in the year 1635;" and right to land thereupon claimed. Subsequent entries of the same tenor appear in other parts of the land records; as "for transporting *negro* Phillis in the year 1648." (See Liber A. B. & H. p. 9.) It is an event, recorded by most of the historians of Virginia, that *negroes* were first imported or introduced into that province in the year 1620, by a *Dutch* ship bound

homeward from the coast of Guinea, from which the Virginia colonists bought twenty of that wretched race of people. It may be proper, however, to mention, that *Smith* (in his *Hist. Virg.* vol. ii. p. 391, edit. of 1819,) seems to have placed this event in the year 1619; where he states, under the date of 1619, as follows: "About the last of August came in a Dutch man-of-warre that sold vs twenty nagars." The example of a sister colony, so nearly situated to Maryland, would naturally be soon adopted by the latter. From the name "Francisco,"—it is probable, he was brought from the Spanish West Indies. The English, however, had commenced the slave trade, under a charter for that purpose from king James the first, as early as the year 1618; but, the profits not being found to answer expectation, the charter was suffered to expire. However, in 1631, when the English had begun the settlement of plantations in the West Indies, *negroes* being in much demand, a second company for the African slave trade was erected by Charles the first. (See *Edwards's Hist. of the West Indies*, B. 4, ch. 2.) So that the regular importation of negro slaves into Maryland might perhaps have been lawful, immediately in its first settlement in 1634. The importation of "Francisco" seems, to be the first notice *on record* of the introduction of this race of people into the province.

It may be further remarked, that if the "Conditions of Plantation," which are supposed to have been issued prior to the embarkation of the first colonists in 1633, were the same, at least as to this particular, as those subsequently issued in 1636, (which will appear in the proceedings of the next year,) the owner of "Francisco" was entitled to *one hundred acres of land* for his "transportation into the province," under the denomination of a "servant." This instance, and more particularly that of "Negro Phillis," seem to prove, that negroes were then considered more as legitimate *population* than property.

NOTE (VI.) p. 42.

The *first commission on record*, for organizing the government of the province; taken from the book entitled, "Council Proceedings from 1636 to 1657," p. 11.

"Cecilius, by the grant and ——— * of our sovereign lord Charles by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c., absolute lord and proprietary of the province and country of Maryland in the parts of America, lord Baron of Baltimore, &c., to all and singular persons to whom this present writing shall come, greeting,—Know ye, that we, taking into our serious consideration the necessity of making a governor, appointing a council, and other officers, and establishing of laws proper and convenient for preservation of the peace, and support of the commonwealth of our province of Maryland, and likewise calling to mind the faithful and laudable service done by our dear brother Leonard Calvert, esqr., as well in the adventure of his person in the first descent and settling our colony there, as the ordering and advancing the same by his personal residence within the same our said province, wherein he hath manifested, to the satisfaction of our self and of our colony there, such wisdom, fidelity, industry, and other virtues as render him capable and worthy of trust, hereby by us intended to be reposed in him; and for divers other good causes and considerations us thereunto especially moving, have nominated, constituted, ordained, authorized, and established, and by these presents do nominate, constitute, ordain, authorize, and establish the said Leonard Calvert, in the absence of us and our heirs, our lieutenant general, admiral, chief captain and commander, as well by sea as land, of our said province of Maryland and the islands to the same belonging; and do, by these presents, give unto him the chief commandment and absolute authority about

Leonard Calvert constituted lieutenant general, admiral, &c.

* This and other blanks in this commission are so in the record.

and in all matters of warfare by sea and land, to execute and administer the same, to the resistance of the enemy or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious for the preservation of our said province, and to do all such things as do belong or appertain to the office of a general, admiral, captain or commander: to have, hold, and enjoy, and administer the same, with such power and authority as any other lieutenant governor, general, admiral, captain and commander of any other province may, might, or ought by the law of arms to do, until we shall signify our pleasure to the contrary; And, therefore, we do hereby further ordain and command all captains ——— and soldiers, as well by sea as by land, whom it may concern, and all such as are and shall ——— of our council within our said province, all our officers, receivers, bailiffs, marshalls, magistrates, gentlemen, and all other inhabitants of our said province of what quality or condition soever, that they and every of them do acknowledge the said Leonard Calvert in the quality of our lieutenant general, admiral, chief captain, and commander of all our said province, and the islands and members of the same, and do honour, respect, and obey him, as they ought to do, upon pain of such punishment to be inflicted upon them and every of them, as such a high contempt shall deserve; And to the end that no man there shall pretend ignorance, we do command this our ordinance to be proclaimed and published within our said province at the places accustomed to proclaim and publish our edicts or ordinances, commanding him our said lieutenant to proceed with rigour against all contemnors and neglectors of the same, according to the order of punishment before maintained without favour or ———; And we do further by these presents make, constitute, ordain, and establish the said Leonard Calvert to be our chancellor, chief justice, and chief magistrate within our said province, until we or our heirs shall signify the contrary under our hand and seal, and from time to time to appoint and constitute officers and ministers for the preservation of the peace, administration, and execution of justice, and for doing and executing of all other things whatsoever which belong to the establishing and governing of a good and happy commonwealth within our said province; And we do further give and grant to him our said lieutenant, chancellor, chief justice, and chief ——— full and absolute power and authority to assemble the freemen or their deputies at Saint Mary's within our said province upon the five and twentieth day of January next ensuing the date hereof, and then and there to signify to them, that we do disassent to all the laws by them heretofore or at any time made within our said province, as we do hereby declare them to be void; and further to shew unto them the draught or copy of all such laws and ordinances for the good government of our said province, as we shall before that time transmit to him our said lieutenant under our hand and seal, with our assent for enacting of the same; and likewise, if the said freemen or their deputies so assembled shall approve and consent unto all the said draughts or copies of the said laws and ordinances in manner as we send them over, to publish the same as laws under the great seal of our province, that the people and inhabitants of our said province may take the better notice thereof; And we do further by these presents give and grant unto him our said lieutenant like absolute power and authority, after the said assembly so called as aforesaid shall be by him dissolved, at all or any other time or times, when and as often as he shall think fit, to call or summon one or more general assembly or assemblies of the freemen within our said province, and to propound and prepare other wholesome laws and ordinances for the government and well ordering of the said province and people within the same, to be by us assented to and confirmed, if upon view and mature consideration had of the same, we shall in our judgment approve thereof; And we do by these presents give and grant full power and authority unto our said lieutenant to ad-

His power and authority.

This ordinance to be proclaimed and published.

Leonard Calvert appointed chancellor, chief justice, &c.

Power to call an assembly.

To signify to them his *disassent* to the laws heretofore made by them.

Power to the governor to call and dissolve assemblies.

Power to the governor to make ordinances, &c.

Power to him to appoint public ports.

To establish fairs and markets.

Power of pardon except for high treason.

Governor to be keeper of the great seal.

To make grants of lands.

Jerome Hawley,

journal and dissolve the said assembly so authorized to be called on the five and twentieth day of January next ensuing the date hereof as aforesaid, and all other assemblies by him hereafter to be called, at his pleasure; And, forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require — a speedy remedy, We do, therefore, give and grant unto our said lieutenant full power and authority to make, constitute, ordain and publish in our name such reasonable and profitable ordinances, edicts, and proclamations, with reasonable pains and penalties therein to be expressed to be duly inflicted on all such offenders against the same as he our said lieutenant in his discretion shall think fit, Provided that such penalties do not extend to the taking away the right or interest of any person or persons of or in their life, members, or freeholds, goods or chattels; All which ordinances, edicts, and proclamations shall stand in force only and until we or our heirs shall signify the contrary to him our said lieutenant general and the people there, or that he our said lieutenant shall in his discretion think fit to repeal the same; And further we do hereby give and grant full power and authority to him our said lieutenant to appoint fit places for public ports for lading, shipping, unlading, and discharging all goods and merchandizes, to be imported or exported into or out of our said province, and to prohibit the shipping or discharging of any goods or merchandizes whatsoever in all other places or ports within our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish markets and fairs there to be held upon certain days for that purpose to be by him appointed; And we do further by these presents give full power and authority to our said lieutenant, if he see cause, to pardon and remit, in part or in whole, all pains, forfeitures, and penalties, which any person or persons within our said province shall incur for any misdemeanor or offence against any of our laws, ordinances, or orders whatsoever, made or to be made for the good government of our said province, and to grant pardons to all and every such delinquents in our name under our great seal of our said province, so that such pardon or pardons extend not to the pardoning of high treason; And further we do by these presents commit the custody and keeping of our great seal of our said province unto him our said lieutenant; and we do hereby give and grant unto him our said lieutenant absolute power and lawful authority for us and in our name to pass and grant under the same our great seal all writs and processes, all commissions for the execution of justice and for dividing and bounding of lands, all pardons, licences, and all public acts and deeds whatsoever, which shall at any time pass within our said province; and we do further hereby give full power and authority unto him our said lieutenant, for us and in our name, to pass and grant under our great seal to such person or persons such quantity of land within our said province for such estate and interest and with such privileges and immunities as we have or from time to time shall give him our said lieutenant for warrant under our hand and seal, all which grants, so to be made, passed, and granted, after the same grants and the said warrants under our hand and seal for the passing thereof, shall be enrolled by our secretary of our said province for the time being and not before, we will and do hereby declare shall be effectual in law against us, and shall bind us and our heirs as firmly as if we ourselves had been present and had affixed our great seal to such grant or grants in proper person; And for the better assistance of him our lieutenant in the execution of the premises and of the charge by us committed to him we have appointed and ordained, and by these presents do appoint and ordain our well beloved Jerome Hawley, esqr., Thomas Cornwaleys, esqr., and John Lewger,

gent: to be of our council of and within our said province, with whom our said lieutenant shall from time to time advise, as he shall see cause, upon all occasions concerning the good of our said province and of the people there; And we do hereby give and grant full power and lawful authority unto him our said lieutenant to inquire and determine, and finally to judge of and upon all causes criminal whatsoever, of what nature, kind, quality, degree, or condition soever the same shall be, which may — or arise within our said province, as fully and absolutely as if we ourself were personally present, to give sentence or judgment in or upon the same, (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgment; and also to hear and determine all civil causes, actions, suits, and demands both in law and equity — concerning any goods, chattels, contracts, debts, demands, or other personal or mixt action or actions, suit or suits whatsoever, in the most summary and equal way that he may, according to the orders, laws, and statutes of that our said province already made and established, or hereafter to be made or established, and in default of such laws established or to be established within our said province, then according to the laws and statutes of the realm of England, as near as he may or can — and determine thereof, and where the life, member, or freehold of any person or persons shall happen to come into question within our said province we do hereby give and grant to him our said lieutenant *or** to such persons as we shall from time to time by our letters or any other warrant under our hand and seal nominate and appoint to be of our council within the said province, or to any three of them, whereof our said lieutenant always to be one, full power and authority to inquire and determine thereof according to the laws of our said province established or to be established, and finally to give sentence and judgment thereupon, and to award execution accordingly, and we do hereby for the better executing of the premises, and preservation of the records of all proceedings in the premises, appoint, constitute, and ordain the said John Lewger, as well to be our secretary and keeper of the acts and proceedings of our lieutenant and council for the time being, and for the doing and recording of all grants by us and our heirs to be made of any lands or offices within our said province, and of all matters and acts which by any instructions, laws, or ordinances made or given, or to be made or given for or concerning our said province, shall or ought by the appointment of us and our heirs, or by the appointment of our lieutenant or other chief governor for the time being, or otherwise to be recorded, as also our collector and receiver of all our rents, profits, and customs from time to time to be due or payable within the said province. And lastly, whereas our said lieutenant may [happen to die, or] hereafter, by absence out of our said province, not attend the said charge and trust hereby in him by us reposed, We do hereby give and grant unto him our said lieutenant full power and authority from time to time, in such cases of absence, [or death] to nominate, elect, and appoint such an able person inhabiting and residing within our said province, as he in his discretion shall make choice of and think fit to be our lieutenant general, admiral, chief captain and commander, as well by sea as land of our said province, [in as large and ample manner as we have by these presents authorized him our said lieutenant to govern for the present; And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland, and shall fail to make choice of, nominate, and appoint some person to be our lieutenant general, admiral, and chief captain and commander of our said province, as aforesaid,]† We do hereby give and grant to

Thomas Cornwall, and John Lewger, appointed councillors.

The governor to be the judge of criminal causes.

To hear and determine civil causes.

Where the life, member, or freehold come in question, the governor and council to inquire and determine.

John Lewger appointed secretary of the province.

And register of the land office.

Also collector of the customs and receiver of the quit-rents.

Power to the governor to appoint a deputy in case of his own absence.

* Quere, if the word "or" here should not be "and." In the like paragraph in the commission of 1642, it is so expressed, and the sense seems to indicate, that it was so in the original.

† The preceding words, inserted between brackets, are not in this commission, as it now stands recorded, but, as the sense without them would be evidently imperfect, and a clause, to the same

our councillors there for the time being, or the greater part of them, full power and authority from time to time in every such case, to nominate, elect, and appoint such an able person inhabiting within our said province, as they or the greater part of them shall make choice of and think fit to be our lieutenant general, admiral, chief captain and commander as well by sea as by land of our said province and of the islands to the same belonging, which person to be chosen and appointed in either of the cases aforesaid,* We do hereby declare shall be our lieutenant general, admiral, chief captain and commander during the absence of our said brother our present lieutenant, or until we or our heirs shall constitute and appoint another lieutenant or governor of our said province, or otherwise determine the same, to which lieutenant general, admiral, chief captain and commander to be elected, nominated and appointed as aforesaid, we do hereby give and grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother, willing and commanding all our council, captains, soldiers, officers, ministers and people of our said province and all others whom it may concern to be obedient unto him in all things, matters, and causes as we have herein and by these presents commanded them to be obedient unto our said brother our present lieutenant general, admiral, chief captain and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve. Given under our hand and seal at London in the realm of England the fifteenth day of April in the year of our Lord God one thousand six hundred and thirty-seven.

Signed LEWGER.

LOCUS MAGNI



Sigilli.

Endorsement.—These are to authorize you to put our great seal for the province of Maryland to this our commission for the government there—15th of April, 1637.

Signed C. BALTIMORE.

*To our secretary for the
province of Maryland.* }

NOTE (VII.) p. 56.

This right of originating or propounding laws, as exercised in the English house of commons, is alleged by *De Lolme*, to be peculiar to the English constitution. (See his treatise thereon, B. 11. ch. 4.) “In most of the *ancient* free states,” he adds, “the share of the people, in the business of legislation, was to approve or reject the propositions which were made to them, and to give the final sanction to the laws. The function of those persons, or in general those bodies, who were intrusted with the executive power, was to prepare and frame the laws, and then to propose them to the people: and in a word, they possessed that branch of the legislative power which may be called the *initiative*, that is, the prerogative of putting that power in action.” In a note to the preceding passage the author seems to explain his remarks therein, as being principally in allusion to the mode of legislation practised by the Roman republic; wherein all laws originated in the senate before they could be proposed to the *comitia* of the people for their assent. This seems, indeed, to have been the necessary result

purpose and nearly in the same words, is in the commission of 1642, (which will be exhibited in a subsequent part of this work under its proper date,) the preceding words in brackets, taken from the last mentioned commission, are here inserted, to render the above clause more intelligible.

* This *alternative* expression might possibly be referred either to the two cases of *absence* or *death*, or to the two modes of appointment, either by the lieutenant general or by the council; but the whole purview of the clause appears to indicate a reference to the two “cases” of absence or death, rather than the two modes of appointment; and therefore justifies the preceding insertion in brackets.

of the want of the principle of *representation*, confessedly the modern invention of the English. When all the citizens were to assemble, each in his individual capacity, to give his assent to a law, as they were both at Athens and at Rome, in the times of their republics, it became impossible to indulge every man in this right of propounding his own scheme of a law. The Athenian and Roman senates, therefore, exercised the power of propounding the laws, which the people were either to affirm or reject.

Most of the *modern* republics also, (according to this ingenious writer,) are or were deficient in this great popular privilege. At Venice the Senate, (which was composed of a choice few of the nobles,) exercised the exclusive power of proposing the laws to be enacted by the grand council or assembly of the nobles. In the Canton of Berne, all propositions must be discussed in the little council, which is composed of twenty-seven members, before they are laid before the council of the two hundred, in whom resides the sovereignty of the whole Canton. And in Geneva, the law is, (according to *De Lolme*,) "that nothing shall be treated in the general council or assembly of the citizens, which has not been previously treated and approved in the council of the two hundred; and that nothing shall be treated in the two hundred, which has not been previously treated and approved in the "council of the twenty-five." (See also Coxe's *Travels*, or *Letters on Switzerland*, *Lett.* 64.)

Although the monarchical republic of England may thus proudly boast of a pre-eminence in establishing and cherishing, in the popular branch of its constitution, this most essential principle of political liberty, beyond that of all other republics, ancient or modern, yet it appears, that at some unfavourable periods of her history, she exhibited some symptoms of desire to exclude it from her colonial system of government. A great portion of Ireland might, without doubt, be considered as a *colony* of England. The original natives of Ireland, prior to the conquest of that country by the English, were in a state of perfect barbarism; and knew no more of the institutions of a free government, than the Indian tribes of America, living like them in clans or bands under the arbitrary and tyrannic sway of some one chieftain; who had the power of life and death, according to his own will. After the conquest, and as soon as the English had colonized all Leinster and the greatest part of Munster, (forming a portion of the island commonly termed the *English Pale*,) the government of England, in whom the supremacy of Ireland became vested, constituted parliaments therein, as a natural concomitant with their colonists. To be governed by the laws of a parliament, and to renounce their barbarous *Brehon* laws, was considered by the native Irish as a grievous calamity. The English colonists there also, in process of time, began to experience some oppression and inconvenience resulting from the frequency of parliaments unnecessarily called by some of the lords lieutenants. To throw difficulties in the way of calling a parliament, as also to limit the power of an Irish governor or lord lieutenant, they obtained, in the reign of Henry the seventh, an Irish statute, made by their own parliament, (10 *Hen.* 7th, commonly called sir Edward Poyning's law,) which was enacted, (as the statute itself expresses,) "at the request of the commons of the land of Ireland," by which, "No parliament was to be holden thereafter in the said land, but at such seasons as the *king's lieutenant and council* there first do certify the king under the great seal of that land, the causes and considerations and *all such acts*, as them seemeth should pass in the same parliament, and such causes, considerations, and acts, affirmed by the king and his council," (in England) "and his license thereupon, as well in affirmation of the said causes and acts, as to summon the said parliament had and obtained. (See Leland's *Hist.* of Ireland, vol. 2, p. 108, and the Appendix thereto, and 4 *Inst.* 352.) It is true some differences took place between the Irish house of peers and the lord lieutenant of that king-

dom, about the time of the first emigration to Maryland, (1634,) relative to a conjoint right, which the Irish peers claimed, of originating laws to be "certified" to the king of England, for his approbation, with the lord lieutenant and his privy council. (See Leland's Hist. of Ireland, vol. 3, p. 20.) But in either event of this question in Ireland, the royal prerogative of first assenting to any proposed bills, before they could be *propounded* to the immediate representatives of the people, the Irish house of commons, seemed to afford sufficient analogy to authorise lord Baltimore, (being an Irish peer, and claiming palatinate *regalia* over his province of Maryland,) in contending for the like prerogative of *initiating* and propounding the laws to be enacted by his provincial assembly in Maryland. The mode of legislation prescribed by the first and second charters of Virginia, for that colony, seems also to have afforded a precedent for his lordship's construction of his prerogative. By those instruments of grant, the powers of both originating and enacting laws for the government of Virginia, were exclusively vested in the king and his *council of Virginia* in England. It is true, that in the year 1620, (when the first legislative assembly of Virginia is said to have been holden,) they appear to have originated certain laws, which they transmitted to the treasurer and company of England for their assent; and probably ever afterwards continued to exercise that right. The primitive colonial policy in England, however, was at least to originate all laws, if not to legislate entirely for the colonies. Nor has lord Baltimore been singular in these ideas of his powers. In the year 1678, a new system of legislation was adopted for the island of Jamaica, founded nearly on the model of the Irish constitution under Poyning's act; and the earl of Carlisle was appointed chief governor for the purpose of enforcing it. A body of laws was prepared by the privy council of England; which his lordship was directed to offer to the assembly, requiring them to adopt the whole code, without amendment or alteration. In future the heads of all bills (money bills excepted) were to be suggested in the first instance by the governor and council, and transmitted to his majesty to be approved or rejected at home; on obtaining the royal confirmation, they were to be returned under the great seal in the shape of laws, and passed by the general assembly; which was to be convened for no other purpose than that, and the business of voting the usual supplies; unless in consequence of special orders from England. On his lordship's arrival in Jamaica he called an assembly and propounded to them the laws, according to his instructions; but they were rejected by the assembly; not so much, as it appears, from any special objections to the particular laws themselves, as generally to manifest their indignation at this colonial mode of legislation. The assembly persisting with perseverance in their rejection of any laws thus made, and the governor reporting their proceedings to the king and council in England, it appears to have occupied the attention of "the committee of trade and plantations" for several years; but, after referring the subject to the opinions of the attorney and solicitor-general, who, on account of its difficulty, advised a reference of it to all the judges of England, it was finally, in the year 1680, abandoned, and the assembly left to enjoy their former method of legislation. (See Edwards's Hist. of the West Indies, vol. 1, p. 186, and the Hist. Account in the appendix thereto.)

It deserves remark, that the form of government framed by the justly celebrated Mr. Locke for Carolina, in the year 1671, provided, "that no matter should be proposed in parliament," (that is, in the assembly consisting "of all the proprietors, the landgraves, the casiques, and one commoner from each precinct sitting in one room, each man having one vote,) "that had not previously been prepared and passed by the grand council;" in whom the executive power was placed. (See Williamson's Hist. of North Carolina, vol. 1, p. 108-9.)

William Penn also, whose character has been assimilated to that of Lyncurgus,

the celebrated Spartan lawgiver, prescribed in his first frame of government for his Pennsylvania colonists, in 1682,—“That the governor and provincial council should prepare and *propose* to the general assembly, *all bills*, which they should at any time think fit to be passed into laws, within the said province; which bills should be published thirty days before the meeting of the general assembly, in order to the passing them into laws, or rejecting of them, as the general assembly should see meet.” Accordingly, at the meeting of the first assembly held, (in 1683,) under this constitution, this modern Lycurgus, (for he was then present in his province, and acted as governor thereof,) propounded to the assembly two bills, the principles of which he must certainly have borrowed from the Spartan legislator; one was—“that young men should be obliged to marry at or before a certain age;” and the other,—“that two sorts of cloaths only should be worn; one for winter, and the other for summer.” The historian does not say, whether they were passed into laws, or not. Perhaps their absurdity was too glaring to admit them. See Proud’s Hist. of Pennsylvania, vol. 1, p. 238.

NOTE (VIII.) p. 64.

According to Chalmers, (see his Annals, ch. ix. note 21,) among the same papers in the plantation office, before cited by him, (viz. Hist. Virg. Pap. 75 B. p. 139,) there is a copy of an *indictment* against Clayborne, and of the *inquisition* finding the forfeiture of his estate. It is, however, probable that the *indictment* referred to by him is only a copy of one of those herein before stated, in which Clayborne is charged as an accessory. As to the *inquisition*, I find among our records, (see an old thin book, with leather cover, entitled, “Council Proceedings from 1637 to 1644,”) the following writ :—“Cecilius, &c. to the sheriff of the isle of Kent, greeting; we command you to seize to our use all the goods and chattels of William Clayborne, gent., within that island; and that you keep them in safe custody, until you shall have further order from us therein. Given at St Mary’s March 27th, 1638.” N. B. It appears from a commission, recorded in the same book, and in “Council Proceedings from 1636 to 1657,” p. 25, that John Langford was both the sheriff and coroner of the isle of Kent at this time; but no return appears, as I could find, to the foregoing writ. The following return, however, relative to Clayborne’s property, I find made, as the record expresses it, “by *serjeant* Vaughan, meaning, as it would seem, Mr. Robert Vaughan, before mentioned, p. 45, who was, as the commission there referred to styles him, “*serjeant of the trained band*,” at St. Mary’s. It is probable that military force had been thought necessary for the seizure of Clayborne’s property, and that Vaughan, as an officer, had been sent for that purpose, and made the return here stated, to wit :

“June 20th, 1638.—By virtue of a warrant to me directed I have seized into the lord proprietary’s hands, these goods and chattels belonging to captain Clayborne *within Palmer’s island* ;” viz.—“Edmund Griffin, William Jones, William Freeman, Richard Seymoure, servants.” Then follow, in the schedule, a list of some live stock, plantation utensils, and some household goods,—also, “six yards of *peake*, and one yard and a half of *roanoke*.” To the foregoing is added a schedule also of “Thomas Smith’s goods, of Kent ;” signed “Robert Vaughan.”

It may be proper, perhaps, to state in explanation of the above, that “*Palmer’s island*” is situated at the mouth of the Susquehanah, whereon Clayborne had made a settlement, or erected a trading house, at the time he made his other settlements on the isle of Kent, and prior to the arrival of the first Maryland colonists. The terms *Peake* and *Roanoke* will be explained hereafter in note (XVI.)

NOTE (IX.) p. 67.

This is so stated in “The Landholder’s Assistant,” (p. 93;) a work of authenticity, published by Mr. Kilty who was then register or clerk of the land office

of Maryland. He seems to "infer, that these *baronies* were divisions for *feudal*, as counties and hundreds were for *political*, purposes." But, as before stated in a former edition of this part of our history, there are strong and probable grounds to believe, that the before mentioned "Bill for Baronies" contemplated a civil division of counties similar to that adopted in Ireland; where, it seems, the word *barony* is used as synonymous to that of *hundred* in England. This appears from one or two law authorities. In *Spelman's Glossary*, (published about the year 1626,) verb *Baronia*, is the following passage. "*Baronia pro parte comitatus quam hundredum dicimus. Sic frequens in Hibernia, ubi connacia provincia sub nostra memoria in comitatus dispartita est; comitatusque deinceps in baronies dissecti, ut nuper etiam in ultonia factum intelligo.*" *Sullivan* also, in his law lectures, (see Lect. 26,) states, that even at this day those divisions of a county, which in England are called *hundreds*, are in Ireland called *baronies*. Lord Baltimore, being an Irish peer, might have directed, in this respect, the mode of colonization then recently adopted in Ireland during the preceding reign, to be pursued in his colony. An additional argument against the supposition, that this "*bill for baronies*" was intended in a *feudal* sense, seems to arise from the proviso annexed to the clause in the charter, which authorises the lord Baltimore to confer titles and dignities,—“so that they be not such as are now used in England.” *Baronies*, in a *feudal* sense, would imply, that the grantees, or lords thereof, would be called *barons*,—a “title and dignity then used in England,” and, therefore, incompatible with the charter. This may afford a reason, perhaps, why no grant of a barony, even should the contemplated division have been intended in a *feudal* sense, is to be found among our records, and possibly also, why no act of assembly was renewed with a similar title. But the more probable purport of the act may be supposed to have been, to use the word *barony* as synonymous to the word *hundred*, though subsequently the word *hundred* was adopted, as being more consonant with the common law of England, which was deemed to extend to the province.

Chalmers, in his *Annals*, (ch. ix.) the principal writer referred to in the text, states that “the province was divided into *baronies* and *manors*; the *privileges* of which were carefully regulated.” The charter authorised lord Baltimore “to erect any parcels of land within the province into manors, and in every of those manors to have and to hold a court baron, and all things which to a court baron do belong; and to have and to keep view of frank pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank pledge belonging.” In pursuance of this clause in the charter, several bills, relative to *manors*, appear in the list of bills passed at this session of 1637–8; to wit,—“A bill for bounding of manors; a bill for assigning of manors; a bill for the peopling of manors; a bill for the supporting of manors; a bill against aliening of manors; and a bill for services to be performed for manors and freeholds.” From these titles only, it would seem, Mr. Chalmers has inferred, that the “*privileges*” attached to manors “were carefully regulated.” Although the lord proprietary made several grants of manors within this province, in pursuance of the before mentioned clause in his charter, yet it does not appear, that any very substantial *privileges* were ever exercised by the grantees thereof, as lords of those manors. The court held under the commission before stated, (p. 19,) “to certain justices of the peace on the isle of Kent to hold a *court leet*” there, seems to have partaken more of the nature of what was subsequently called a county court, than a court appertaining to a manor; and “the manor of Kent fort,” the only manor ever erected on the isle of Kent, was not then granted. However, it does appear, that at subsequent periods of time, one or

two rare instances occurred of the holding both courts baron and courts leet in two distinct manors. "A court baron was held at the manor of St. Gabriel, on the 7th of March, 1636, by the steward of the lady of the manor, when one Martin Kirke took of the lady of the manor in full court, by delivery of the said steward, by the rod, according to the custom of the said manor, one message, &c., lying in the said manor, by the yearly rent of, &c., and so the said Kirke, having done his fealty to the lady, was thereof admitted tenant." (MS Extracts from the records.) This seems to have been conformable to the ancient practice of courts baron in England, on the admission of any tenant of a manor. The steward thereof, taking hold of one end of a rod and the tenant of the other, the former repeats to him;—"The lord of this manor by me his steward doth hereby deliver you seisin *by the rod*, and admit you tenant to the premises," &c. (See the Practice of Courts Leet and Courts Baron, by chief justice *Scroggs*.) Also, "in October, 1661, Thomas Gerrard petitioned to the provincial court, stating, that at a *court leet* and *court baron*, held for the manor of St. Clements, on the 27th of October, 1659, Robert Cole was *fined*, for marking one of the lord of the manor's hogs, and prayed to have satisfaction for the unlawful marking and killing such hog, as the laws of the province provided." The grant of this manor, which lay in St. Mary's county, was made to Thomas Gerrard in the year 1639, and appears to be one of the oldest grants of a manor now extant on the records of the province. It contained a clause of power to Thomas Gerrard to hold a court baron and court leet. The last mentioned case, which occurred in this manor, seems to have been one of those petty misdemeanors, which would have been properly cognizable by a court leet in England; but, as the lord of a manor could not be a judge in his own case, for a trespass to himself, (see 2 *Bac. Abr.* 595,) this principle probably occasioned his application, as above, to the provincial court.

Few, if any, other *privileges* attached to manors in England, appear to have been exercised in Maryland by the grantees of manors. *Fines for alienation*, and *escheats* for want of heirs, are well known to have usually gone to the lord proprietary of the province, and not to the lords of the manors. It was decided indeed, by the provincial court in 1648, in a particular case, (which is recorded in "Council Proceedings from 1636 to 1657," p. 215, and also stated in *Kilty's Landholder's Assistant*, p. 104,) that *forfeitures* for treason or "rebellion" appertained to the lord of the manor; but the legality of this decision might well be questioned, since *forfeitures for treason* were prior to the introduction of feudal tenures in England, and paramount to the right of the lord of a manor by escheat upon an attainder or conviction of a *felon*, which formerly included that of a *traitor*; (see 2 *Bl. Com.* 251;) and, therefore, among the bills of the next session following that last mentioned in the text, to wit, that of 1638-9, is one entitled, "an act for treasons," by which the offender was "to forfeit all his *lands*, *tenements*, *goods*, &c. to his lordship;" as will be hereafter more fully stated. It would appear also, that even in cases of treason *against the king*, under the statute of 25 *Ewd.* 3, and not under the act of assembly just mentioned, the lord proprietary of the province would have been entitled to the forfeiture accruing on the commission of all treasons within this province. For, the lord proprietary, by his charter of *grant* from the king was to have "all and singular such and as ample rights, prerogatives, royalties, royal rights, and temporal franchises whatsoever, within his province, as any bishop of Durham within his county palatine ever had;" and it seems, from *Darey's* case, (stated in 1 *H. H. P. C.* 254, 359,) that a bishop of Durham had by the *common law*, in virtue of his palatinate *regalia*, a right to all forfeitures for treason within his county palatine. These forfeitures also for *felony*, as well as treason, appertained to the lord proprietary and not to the lords of manors granted by him to individuals, unless a particular clause in

such grant of a manor specifically conveyed to the grantee a right to such forfeiture, (see 2 *Bac. Abr.* 577.) Accordingly, in instructions from the proprietary to the governor and council, dated 29th September, 1659, where a question is stated to have been raised,—“Whether *felon's goods* are not included in or under these words in a grant of a manor, (“profits most usually belonging to manors in England:”) lord Baltimore says, that “felon's goods are not profits either most usually or at all belonging to any manor in England by virtue of its being a manor, but is and must be *granted* by especial favour and special words, and is many times granted to *some* in other men's manors.” (See *Kilty's Landholder's Assistant*, p. 104.) Lord Baltimore had, most probably, the advice of good counsel in England on this point.

NOTE (X.) p. 70.

The following is a copy of Clayborne's petition, as it appears on our records, with the immediate proceedings of the council thereon. Why so imperfect a copy of it was placed there, is not easily to be accounted for at this day. It is probable, that the book, from which the transcript was made into that in which it now remains recorded, was one of those, which were seized and embezzled, or *defused* by Clayborne's party in 1644, as before mentioned. The blank spaces are so in the record. See the volume in the council chamber entitled, “Council Proceedings from 1636 to 1657,” p. 4.

“The petition of captain William Clayborne on the behalf of himself and partners to the king shewing;

That the petitioners by virtue of a commission under his majesty's hand, &c., divers years past, discovered and did then plant upon an island in the great bay of Chesapeake in Virginia by them named the isle of Kent, which they bought of the kings of that country, and built houses, transported cattle, and settled people thereon, to their very great costs and charges, which the lord Baltimore taking notice thereof, and the great hopes for trade of beavers and other commodities like to ensue by the petitioners' discoveries, hath since obtained a patent from your majesty comprehending the said island within the limits thereof, and sought thereby to dispossess the petitioners thereof, and debar them of their discovery, &c. Complaint thereof being made, your majesty was pleased to signify your royal pleasure by letter, intimating that it was contrary to justice and the true intent of your majesty's grant, to the said lord —, that notwithstanding the said patent the petitioners should have freedom of trade, requiring the governor and all others in Virginia to be aiding and assisting unto them, prohibiting the lord Baltimore and all other pretenders — him to offer them any violence, or to disturb or molest them in their — plantation, as by your majesty's letter annexed appeareth; since which —* be it your — majesty's said royal pleasure hath been made known to Sr. — governor of Virginia, (who slighted the same,) as also to the lord Baltimore — agents there, yet they have in a most wilful and contemptuous manner disobeyed the same and violently set upon your petitioner's pinnaces and boats — goods to trade, and seized them, and do still detain the same by the —, of which pinnaces and goods the inhabitants within the said isle were — so great famine and misery as they became utterly destitute of any corn — sustain themselves, which enforced them to send a small boat — why they obeyed not your majesty's said royal letters and commands — the said pinnace and goods to enable them to trade for corn — boat approaching near unto some vessel of the said lord Baltimore's — agents, they shot among the petition-

*It may be supposed, that the obsolete adverb, “Albeit,” was here intended, which is synonymous to the word—“although.”

er's men and slew three of them and ——— more, and not content with these great injuries the said lord Baltimore and his agents have openly defamed and unjustly accused the petitioners of ——— crimes, to his exceeding great grief, which hath caused him purposely ——— pair into this kingdom, and humbly prostrates himself and his cause ——— majesty's feet to be relieved therein.

And the petitioners having likewise discovered ——— plantation and factory upon a small island in the mouth of a river at the bottom of the said bay in the Susquehannock's country, at the Indians' desire and purchased the same of them, by means whereof, they are in great hopes to draw thither the trade of beavers and fur, which the French now wholly enjoy in the Grand Lake of Canada, which may prove very beneficial to your majesty and the commonwealth, but by letter now from thenceforth your petitioner is advised, that the lord Baltimore's agents are gone with 40 men to supplant the petitioners' said plantations, and to take possession thereof, and seat themselves thereon.

And the petitioner being desirous to propose a way, whereby your majesty may receive to the crown for plantations an annual benefit—be certain to enjoy the same with the fruits of their labours, they offer unto your majesty £100 per ann. viz. £50 for the said isle of Kent, and £50 for the said plantation in the Susquehannock's country, to have there 12 leagues of land, &c., from the mouth of the said river on each side thereof down the said bay southerly to the seaward and so to the head of the said river and to the Grand Lake of Canada, to be held in fee from the crown of England, and to be yearly paid unto your majesty's exchequer, to be governed according to the laws of England, with such privileges as your majesty shall please to grant, by which means your majesty may raise a great revenue annually, and all planters will be encouraged to proceed cheerfully in their designs.

And the petitioners having now a ship ready to depart with goods and people for the prosecution and managing of their said discoveries and trade, which without speedy supply and your majesty's favour, &c., is like to come to ruin.

May it therefore please your majesty to grant a confirmation of your majesty's said commission and letter under your majesty's broad seal for the quiet enjoyment of the said plantations, &c., to send now with the said ship, and to refer the speedy examination of the said wrongs and injuries unto whom your majesty shall please to think fit, to certify to your majesty thereof, and that your petitioners may proceed without interruption of the lord Baltimore's agents."

[Immediately following the foregoing petition, there appears on our provincial records the following entry; which is probably a copy from the proceedings of the privy council in England.]

"At the court at New-market, the 26th of February, 1637.

His majesty approving the proposals made in this petition for the advancement of those plantations and the hopeful trade of furs, is graciously pleased to confirm what was contained in his former commission and letter under the broad seal, and to that end referreth to the lord archbishop of Canterbury, lord keeper, lord privy seal, and any other the commissioners for plantations, who shall be near at hand and whom they please to call, the consideration of all the contents of this petition, and with Mr. Attorney's advice to settle such a grant of the things herein desired, as they shall think fit to be prepared by him for his majesty's signature. Their lordships are also to examine the wrongs complained of, and certify his majesty what they think fit to be done for redress hereof.

JOHN COOKE,

EXD. T. MEAUTYS.

We appoint the first council day after Easter for the hearing of this business at the council board, and do hereby will and require, that present notice be given to the lord Baltimore or any else whom it may concern, together with a true copy

of this petition and reference, and that they, by themselves or counsel, fail not to attend accordingly.

WM. CANT,
THOS. COVENTRY,
W. MANCHESTER.

NOTE (XI.) p. 72.

Reports of the lords commissioners for plantations, to whom Clayborne's petition was referred :

At Whitehall, 4th of April, 1638.

PRESENT,

Lord Archbishop of Canterbury.

Lord Keeper,	Lord Cottington,
Lord Treasurer,	Mr. Treasurer,
Lord Privy Seal,	Mr. Comptroller,
Earl Marshall,	Mr. Secretary Cooke,
Earl of Dorset,	Mr. Windebank.

Whereas a petition was presented to his majesty by captain William Clayborne, on the behalf of himself and partners, shewing, that, by virtue of a commission under his majesty's hand and signet, they, divers years past, discovered and planted upon an island in the great bay of Chesapeake, in Virginia, named by them the isle of Kent, whereupon, as they pretended, they had bestowed great charges ; and that the lord Baltimore, as they alleged, taking notice of the great benefit that was likely to arise to them thereby, obtained a patent from his majesty, comprehending the said island within the limits thereof ; and that they had likewise settled another plantation upon the mouth of a river in the bottom of the said bay, in the Susquehanough's country, which the said lord Baltimore's agents there, as they allege, sought to dispossess them of, pretending likewise great injuries and violence offered to them in their trade and possessions in those parts by the said agents, in killing some of the said captain Clayborne's men and taking their boats, contrary to the said commission and the express words of a letter from his majesty under his hand and signet ; and therefore besought his majesty to grant to the petitioners a confirmation, under the great seal, of his majesty's said commission and letter, for the quiet keeping, enjoying, and governing, of the said island, plantation, and people, with other additaments of lands and immunities in those parts ; and likewise that his majesty would refer the examination of the said wrongs and injuries to such as his majesty should think fit, as by the said petition more at large appeareth. Forasmuch as his majesty was pleased, at New Market, on the 26th of February, 1637, to refer the consideration of the petitioners' request unto the lord archbishop of Canterbury, the lord keeper, the lord privy seal, and any other the commissioners for plantations, who should be near at hand, and whom they pleased to call, and with all to advise with Mr. Attorney General, for preparing and settling the grant desired for his majesty's signature, and to examine the wrongs complained of, and to certify his majesty what they thought fit to be done for redress thereof. Whereupon all parties attending their lordships this day, with their counsel learned, and being fully heard, the said commission and letters being likewise read, it appeared clearly to their lordships, and was confessed by the said Clayborne himself then present, that the said isle of Kent is within the bounds and limits of the lord Baltimore's patent, and that the said captain Clayborne's commission, (as it likewise appeared,) was only a license, under the signet of Scotland, to trade with the Indians of America, in such places where the said trade had not formerly been granted by his majesty to any other ; which commission, their lordships declared, did not extend nor give any warrant to the said Clayborne or any other, nor had they any right or title thereby to the said island of Kent, or to plant or trade there, or in any other parts or places with the Indians or savages within the precincts of the

lord Baltimore's patent. And their lordships did likewise declare, that the aforesaid letter, under his majesty's signature, which had reference to the said commission under the signet of Scotland, was grounded upon misinformation, by supposing that the said commission warranted the plantation in the isle of Kent, which (as now appears) it did not. Whereupon, as also upon consideration of a former order of this board, of the third of July, 1633, wherein it appeared, that the differences now in question being then controverted, the lord Baltimore was left to the right of his patent, and the petitioners to the course of law; their lordships having resolved and declared as above said the right and title to the isle of Kent and other places in question to be absolutely belonging to the said lord Baltimore; and that no plantation or trade with the Indians ought to be within the precincts of his patent without license from him; did, therefore, think fit and declare, that no grant from his majesty should pass to the said Clayborne or any others, of the said isle of Kent or other places within the said patent; whereof his majesty's attorney and solicitor general are hereby prayed to take notice. And, concerning the violences and wrongs, by the said Clayborne and the rest complained of, in the said petition to his majesty, their lordships did now also declare, that they found no cause at all to relieve them, but do leave both sides therein to the ordinary course of justice.

EXT. T. MEAUTYS.

N. B. The foregoing *report* is recorded in a book in the council chamber of Maryland, entitled, "Council Proceedings from 1636 to 1657," p. 8. A copy of it is also published in *Hazard's Collections*, vol. 1, p. 130, purporting to be from "Votes of Assembly of Pennsylvania;" and by Mr. *Chalmers* in his *Annals*, ch. ix. note 25, which, as he states, was taken "from Maryland Papers, vol. 1, bundle C." in the plantation office, England. This copy published by Mr. *Chalmers* does not vary from either of the other copies in any material sentence or word, except only in the date of the *year*, which he states to have been, "the 4th of April, 1639," instead of "the 4th of April, 1638," as in the two former copies. Some further comments on the *variance*, as well as on the *authenticity* of the above report, will be found in the next note but one at the end of this volume. See note (XIII.)

NOTE (XII.) p. 72.

The following letter or order, from Charles I. to lord Baltimore, is copied from *Chalmers's Annals*, ch. ix. p. 23, who states it as taken from "Maryland Papers, vol. 1, bundle C," in the plantation office, England.

"*Charles Rex.*—*Right, trusty, &c.* Whereas formerly, by our royal letters to our governor and council of Virginia, and to others, our officers and subjects, in these parts, we signified our pleasure, that William Clayborne, David Morehead, and other planters in the island near Virginia, which they have nominated Kentish island, should in no sort be interrupted in their trade or plantation by you, or any other in your right, but rather be encouraged to proceed cheerfully in so good a work; we do now understand, that though your agents had notice of our said pleasure, signified by our letters, yet, contrary thereto, they have slain three of our subjects there, and by force possessed themselves by right of that island, and seized and carried away both the persons and estates of the said planters. Now, out of our royal care to prevent such disorders, as we have referred to our commissioners of plantations the examination of the truth of these complaints, and required them to proceed therein according to justice; so now, by these particular letters to yourself, we strictly require and command you to perform what our former general letter did enjoin, and that the above named planters and their agents may enjoy, in the mean time, their possessions, and be safe in their persons and goods there, without disturbance or farther trouble by you or any of yours, till that cause be decided. And herein we expect your ready conformity, that we

may have no cause of any farther mislike. Given under our signet, at our manors of Greenwich, the 14th day of July, in the 14th year of our reign, 1638."

NOTE (XIII.) p. 73.

From a provincial record-book in the council chamber of Maryland, entitled "Council Proceedings from 1636 to 1657," p. 319.

"By the governor and captain general of Virginia, with the advice and consent of the council of state,

A PROCLAMATION.

Whereas the king's most excellent majesty was pleased, by his letters-patent, to grant unto the right honourable the lord Baltimore, a territory or tract of land therein nominated and now known by the name of the province of Maryland, with divers franchises and immunities thereunto belonging as in and by the said letters-patent more at large appeareth; notwithstanding which said royal grant and publication thereof in this colony, divers persons, ill-affected to the government established by his majesty both here and in the said province, have by pretence of a former commission, factiously combined to disturb the said lord Baltimore in the possession of part of his said territory, as also to infringe the privilege of trade, in express terms solely granted to the said lord Baltimore within the said province, and, after many violent and disorderly courses, the said pretenders have so far proceeded as to petition his majesty, that part of the said province, now known by the name of the island of Kent and Palmer's island, with the trades thereof, might be confirmed to them, the consideration of which, their said petition, his majesty was pleased to refer to the most reverend and right honourable the archbishop of Canterbury, the lord keeper, the lord privy seal, and any others, the commissioners for plantations, who should be near at hand, and whom their lordships were pleased to call: Whereupon, their lordships meeting, after a full hearing of both sides, the said pretender's commissions being likewise read, their lordships did declare, the right and title to the isle of Kent and other places in question to be absolutely belonging to the lord Baltimore, and that no plantation or trade with the Indians ought to be within the precincts of his patent without licence from him, as in and by the order of their lordships more at large appeareth: These are, therefore, for the future preventing of further mischiefs and injuries, which may arise from ignorant mistakes or presumptions and pretences as formerly, in his majesty's name to prohibit all persons being or inhabiting, or which shall hereafter be and inhabit within the government of this colony, by themselves or others, either directly or indirectly, from the date of these presents, to use, exercise, or entertain any trade or commerce, for any kind of commodity whatsoever, with the Indians or savages inhabiting within the said province of Maryland, viz. northward from the river Wiconowe, commonly known by the name of Onancock on the eastern side of the grand bay of Chesapeake, and northward from the river *Chinquack* called great Wicocomico, on the western side of the said bay; and for the better regulating of all trades within the said colony, it is further hereby commanded, that no persons shall resort unto the habitations of the aforesaid Indians, without license first obtained for their so doing from the lord Baltimore or his substitute, upon forfeiture of the goods and vessels, or the full value of them, which shall be lawfully evicted to be traded or employed contrary to the premises, with such further punishment by imprisonment of the party or parties, offending against the true intent and meaning of the said proclamation, as shall be thought fit by the government and council.—Given at James city, the 4th of October, *Anno Regni Regis Caroli decimo quario, Anno. Domi. 638.* God save the king.

Vera Copia.—RICHARD KEMP, Secretary."

The date of this proclamation refutes the supposition of Mr. Chalmers, before alluded to, that the decision of the lords commissioners was not made until the year 1639; as it expressly states, in the preamble of it, the petition of Clayborne, and the reference to and the decision of the lords commissioners. It will be observed, that the date of this proclamation, as to *the year of the king's reign*, being expressed in words, precludes the supposition, that 1638, in figures, was wrote for 1639. Counting *from* the 27th of March, 1625, when king James died and Charles acceded to the throne, it would make the fourth of October in the *fourteenth year of his reign* necessarily to have been in the year sixteen hundred and thirty-eight. Additional proof also, that this decision of the lords commissioners was in 1638, and not in 1639, arises from an act of assembly or bill, passed at the very next session, on the first of March, 1638-9, entitled, "an act for trade with the Indians," which, see at large in the second chapter of this work. This act expressly recites the aforesaid decision and order of the lords commissioners in Clayborne's petition, as "bearing date at Whitehall, the 4th of April, 1638;" which it could not possibly have done, had the decision or order been on the 4th of April, 1639, as stated by Mr. Chalmers; for the assembly rose on the 19th of March, 1638-9, a week or two prior to this supposed date of the order. This decision of the lords commissioners is again referred to in another act of assembly, passed at the April session of 1650, entitled, "an act prohibiting all compliance with captain William Clayborne, "in opposition of his lordship's right and dominion over this province," as being of the same date as before mentioned, to wit—"the fourth of April, one thousand six hundred thirty-eight." This last act recites also the above proclamation of the governor of Virginia as being "made and published in Virginia the fourth of October, one thousand six hundred thirty-eight." (See this last mentioned act at large in its proper place as to date in this volume.)

But a more important objection has been made to this document of the decision of the lords commissioners in favour of lord Baltimore. It has been denied, that any such decision or report of the said commissioners, or "committee of foreign plantations," ever existed. In the bill in chancery filed by the Penns, in the year 1735, against the then lord Baltimore, to compel a specific performance of an agreement before then entered into, between these two proprietaries, relative to the bounds of their respective provinces, it is stated, that shortly after Mr. William Penn had obtained his patent for Pennsylvania, which was in the year 1681, (1682, N. S.) he also purchased of the duke of York, (afterwards James II.) the three lower counties, (now Delaware state,) and that a controversy arising thereupon, between these two proprietaries, concerning the bounds of the province of Maryland, on the side next to those counties, the lord Baltimore (Charles, son and heir of Cecilius,) preferred his petition to the king in council concerning the same, which petition was some time in May, 1683, "referred to the consideration of the then committee of trade and foreign plantations, (which committee did then consist of lords of his majesty, most honourable privy council,) and before the said committee, the said lord Baltimore and your orator's father (William Penn) and their counsel learned in the law, were many and divers times heard for near two years and a half together, and a very long suit and trial were had thereon between your orator's said father and the then lord Baltimore, touching the right and title to the said land and soil of the said three lower counties." The bill then proceeds, after stating the order in council thereupon, (which was, in substance, to divide the peninsula between them,) to a distinct allegation relative to the foregoing report of the lords commissioners of 1638, as follows:—"And your orators further show unto your lordship, that during the said contest in the years 1683, 1684, and 1685, the said then lord Baltimore, upon the eighth of October, 1685, produced to the then committee of

trade and plantations, in order to serve himself, an authentic, blank, fictitious paper, not pretended to be signed or sealed at all, but drawn up in the form of the draft of a report and order of the committee of foreign plantations, and supposed to be made on the fourth of April, 1638, touching differences between some lord Baltimore and one Mr. Clayborne, about the isle of Kent, in order to show that former boards' pretended opinion touching the lord Baltimore's right to the isle of Kent, and the then said committee of trade and plantations in 1685, put off the matter, and gave the said lord Baltimore time to procure an attested copy of such pretended report or order in 1638, which the said lord Baltimore undertook to procure, but, nine days after, the said lord Baltimore declared in person to the said committee of trade and plantations, namely, on the 17th of October, 1685, that he could not find the original; whereby an attested copy might be procured, neither, as your orators charge, is there any authentic book or office, where any original or authentic copy may be found or had, but the said blank paper was a mere fiction.”*

Unprovided as we are with any authority to disprove this allegation in the before mentioned bill, and not being able to procure lord Baltimore's *answer* thereto,† we are left to rest the authenticity of the proceedings and order in council of 1638, as before stated, on that kind of evidence which depends upon concomitant circumstances. That Clayborne made resistance to lord Baltimore's possession of the isle of Kent; that from superior military force he was obliged to fly to Virginia; that he was there demanded by commissioners from Maryland; and that the governor of Virginia thought it proper to send him, or permit him to go home to England for the investigation of his rights and pretensions; all seem to be facts well authenticated by the historians of Virginia. There is every probable circumstance, therefore, to warrant the presumption, that he made the application by *petition*, as before stated, to the king in council for a redress of his wrongs. If then he did actually prefer his *petition* before mentioned, some *proceedings* must have been had upon it. If such *proceedings* took place, it is to be presumed, that no order *in council* was ever made *in favour of his claim*, or else he would immediately have availed himself of such order, by returning to the possession of his islands and settlements, and such order would have appeared in form. But this not being the case, and the report of the commissioners appearing of a directly opposite nature, there are strong grounds to suppose that such their *report*, as exhibited, was “authentic,” although no “original” could be found, “whereby an attested copy could be procured.” That the king finally ratified this report of the lords commissioners, must be inferred from the foregoing proclamation of the governor of Virginia; who, without doubt, never would have issued such a proclamation, unless commanded so to do by some order of the king in council to that purpose. The difficulty which lord Baltimore experienced in the year 1685, in his endeavours to find the “original” of this report or order of 1638, seems to be, in some measure, accounted for since, by the success of Mr. Chalmers, in his researches in the plantation office, whereby he was enabled to present to the world, an authentic copy of the report, filed according to his quotation, among “Maryland papers, vol. 1, bundle C,” but bearing the date of “4th of April, 1639,” instead of 1638. This *bundle* might have escaped his lordship's notice, or the search of the proper officer. But the paper, of which Mr. Chalmers has given us a copy, is most probably that “original,” with the variance only in its date, a circumstance not now to be easily accounted for.

* Taken from a MS. copy of the bill in my possession.

† I have not been able to find any copy of lord Baltimore's *answer* to the before mentioned bill in chancery, filed by the Penns in 1735, among the records of Maryland. A copy of it might be procured from England, which would throw much light upon the history of the dispute between these two proprietaries.

NOTE (XIV.) p. 76.

Writ of attachment against the goods and chattels of Clayborne and his partners, in the isle of Kent; from the provincial record book, entitled, "Council Proceedings from 1636 to 1657," p. 35.

Cecilus lord proprietary, &c., To the sheriff of our isle of Kent, greeting: Whereas William Clayborne, late of the isle of Kent, and his partners William Cloberry and David Morehead of the city of London in the kingdom of England, merchants, have jointly usurped our said isle of Kent, and since the absolute lordship and proprietary of the same isle granted to us by his majesty's charter under the great seal of England, and since the promulgating of the said charter within our province, have notwithstanding continued and maintained the said usurpation; and the said William Cloberry and David Morehead, both by letters, messages, and otherwise out of England, have encouraged and assisted the said William Clayborne to commit sundry insolencies, contempts, and rebellions against our lawful government of the said island, and have by sundry supplies of men, arms, and other commodities ministered succour and means to the said William Clayborne to defend and maintain the said island against our said just right and title, and to drive a trade with the Indians of our province, contrary to our royal right and privilege therein, and thereby put us to great expense and charges for maintaining our said just rights and privileges, and for repressing their sundry attempts to the infringing and overthrowing thereof, if it had been in their power, and, by their coopers and servants sent out of England to that purpose, have felled down divers of the best timber trees for making of pipe staves upon our said land, and have otherwise trespassed and committed waste upon the same, to the great disturbance of the peace of our said province, and to our damage of £1000 sterling. Therefore, we do hereby command and authorize you to attach all or any the pipe staves or other goods and chattels whatsoever of the said William Clayborne and his partners within the said isle of Kent, and at the time of the said attachment to cite or summon publicly the said William Clayborne and his partners William Cloberry and David Morehead, that they appear in person or by attorney at some county court held at St. Mary's before the first day of February, which shall be in the year of our lord 1639, there to make answer to such trespasses, wastes, misdemeanors, contempts, and seditious practices, as our attorney shall have to charge them with on our behalf; and if at the making the said summons or proclamation, or within fifteen days after, any one shall offer to bail the said goods, by putting in sufficient security to the value of the said suit, you shall, by virtue hereof, take recognizance to our use, and thereupon release the said attachment; and if no bail be offered within the time limited, we do hereby appoint and authorize you to cause so many of the said goods and chattels attached, whereof there shall be any danger of impairing or a necessity of present disposal thereof, to be praised to their present best value upon the place by two skilful and honest neighbours indifferently chosen, and to cause the said appraisement to be given in upon oath of the said appraisers to our commander of the said island, and by him to be entered upon record, and thereupon to deliver, to our use, the said goods and chattels, so praised and recorded, to our receiver general, his deputy, or assigns, he or they first putting in sufficient security to answer and satisfy the full value of all such goods as shall be by them received as aforesaid to the said William Clayborne and his partners, when they shall enter their appearance in our said county court, within the time aforesaid limited and appointed for their appearance.—Given at St. Mary's the 2d of January, 1638."

NOTE (XV.) p. 76.

I find the following entry made in the oldest record book in the council chamber, (Maryland,) entitled, "Council Proceedings from 1637 to 1644."

"13th May, 1633.—Entered by Cyprian Thoroughgood for Mr. Thomas Copley,—100 wt. of *beaver* traded for with the Indians, since the 10th of February to this present day." Several entries besides, of contracts for *beaver*, appear in the records about this date. From some proceedings of the Virginia Company in London about the year 1621, (as stated by *Stith*, p. 197, and quoted in *Burk's Hist. Virg.* (vol. 1, p. 222,) it would seem, that the Virginia colonists had not, prior to that time, opened any trade of much importance with the Indians for peltry, and that it was then first suggested to the company, from some information received by them of the profitable trade of that sort carried on by the French and Dutch in the northern parts of America. This is easily accounted for by reflecting, that the furs of all northern climates are much superior, and indeed more plentiful than those of the southern.

NOTE (XVI.) p. 78.

The following extract from *Beverley's History of Virginia*, (B. 3, ch. 12,) is here inserted, as being explanatory of what we have mentioned in the text.

"Of the treasure or riches of the Indians.

The Indians had nothing, which they reckoned riches, before the English went among them, except *peak*, *roenoke*, and such like trifles made out of the *Cunk* shell. These passed with them instead of gold and silver, and served them both for money and ornament. It was the *English* alone, that taught them first to put a value on their skins and furs, and to make a trade of them.

"*Peak* is of two sorts, or rather of two colours, for both are made of one shell, though of different parts; one is a dark purple cylinder, and the other a white; they are both made in size and figure alike, and commonly much resembling the *English buglas*, but not so transparent nor so brittle. They are wrought as smooth as glass, being one-third of an inch long, and about a quarter diameter, strung by a hole drilled through the centre. The dark colour is the dearest, and distinguished by the name of *Wampum peak*. The Englishmen that are called Indian traders value the *Wampum peak* at eighteen pence per yard, and the white peak at nine pence. The Indians also make pipes of this, two or three inches long, and thicker than ordinary, which are much more valuable. They also make *runtees* of the small shell, and grind them as smooth as *peak*. These are either large, like an oval bead, and drilled the length of the oval, or else they are circular or flat, almost an inch over, and one-third of an inch thick, and drilled edge ways. Of this shell they also make round tablets of about four inches diameter, which they polish as smooth as the other, and sometimes they etch or grave thereon circles, stars, a half-moon, or any other figure suitable to their fancy. These they wear instead of medals before or behind their neck, and use the *peak*, *runtees*, and pipes for coronets, bracelets, belts, or long strings hanging down before the breast, or else they lace their garments with them, and adorn their *tomahawks*, and every other thing that they value.

"They have also another sort, which is current among them, but of far less value; and this is made of the cockle shell, broken into small bits with rough edges, drilled through in the same manner as beads, and this they call *roenoke*, and use it as the *peak*.

"These sorts of money have their rates set upon them as unalterable, and current, as the values of our money are."

What is said by *Colden* in his "History of the Five Nations," (p. 3.) may be cited in further illustration of this subject.—"*Wampum* is the current money among the Indians; It is of two sorts, white and purple; the white is worked out of the inside of the great conques into the form of a bead, and perforated to string on leather; the purple is worked out of the inside of the muscle shell; they are wove as broad as one's hand, and about two feet long; these they call

belts, and give and receive them at their treaties, as the seals of friendship; for lesser matters a single string is given. Every bead is of a known value, and a belt of a less number, is made to equal one of a greater, by so many as is wanting, fastened to the belt by a string."

This Indian coin, or money, appears to have been in use not only, as we have seen, among the Indians of Virginia, and the Iroquois, or Five Nations to the northward of New York, but with the Indians also inhabiting the banks of the Delaware. *Proud*, in his *Hist. of Pennsylvania*, (vol. 1, p. 133,) mentions, that "in the year 1672," (prior to Penn's charter and purchase,) "the inhabitants of New Castle and Hoarkill, being plundered by the Dutch privateers, were permitted by the government at New York," (under whose subjection the settlements on the Delaware then were,) "in reparation of their losses, to lay an imposition, to the value of four guilders, in *wampum*, upon each anker of strong rum, imported or sold them." As Indians would probably be the greater consumers, it was, without doubt, intended to operate as a tax upon them. The historian further observes, that "*wampum* was the chief currency of the country; of which, at this time, the Indians had carried so much away, that it was become scarce. To increase the value of which, the governor and council at New York, in the year 1673, issued a proclamation, which was published at Albany, Delaware, and other places." In a note hereto subjoined, he further explains, what is meant by *wampum*. "This is the Indian money, by them called *wampum*; by the Dutch, *Sewant*. It is worked out of shells, into the form of beads, and perforated to string on leather. Six beads were formerly valued at a *stiver*; twenty *stivers* made what they called a *guilder*; which was about six pence currency, or four pence sterling. The white *wampum* was worked out of the inside of the great *conques*. The black, or purple, was formed out of the inside of the *mussle* or *clam* shell. These, being strung on leather, are sometimes formed into belts, about four inches broad, and thirty in length; which are commonly given and received at treaties, as seals of friendship. *Wampum* has been long made by certain poor Indian families, at Albany; who support themselves by coining this cash for the traders." See also *Smith's Hist. of New York*, p. 53.

It would seem, however, that the Indians, resident north eastward of the province of New York, had originally no knowledge of this sort of money or medium of trade. *Hutchinson*, in his *Hist. of Massachusetts*, (vol. 1, p. 406,) quotes the following passage from *Hubbard*. "The people of New Plymouth, in the year 1627, began a trade with the Dutch at Manhados, and there they had the first knowledge of *wampompeag*, and their acquaintance therewith occasioned the Indians of these parts to learn to make it." *Hutchinson* from thence draws the inference, that "it is not probable the New England Indians had any instrument of commerce; the English could not have been seven years among them without discovering it.

From *Pike's* expedition to the source of the Mississippi, (p. 86,) *wampum* appears to be still in use among the Indians of that part of America; but it seems to be considered by them only as a traditional emblem of peace, handed down to them, by custom, from their ancestors. In the year 1806, a *Chippeway* chief presented to captain Pike a peace-pipe for him to bear to the *Sioux*, on which were seven strings of *wampum*, as authority from seven bands of the *Chippeways* either to conclude peace or to make war.

Whether the Indians, who occupied Maryland prior to our colonists, spoke the same language as those of the Powhatan confederacy in Virginia, we are not informed. It is certain, that the first English visitors have mentioned no remarkable difference between them, as to their customs and manners. That *peak* and *roenoke* passed as current money among the aborigines of Maryland, as well as those of Virginia, the following extracts afford undeniable evidence.

From "*Council Proceedings from 1636 to 1657*," p. 20.

"Know all persons whom it concerneth, that I have and hereby do give free liberty and licence to Thomas Cornwaleys, esq., and one of the council of this province, to trade with any the Indians of this province for corn, or *roenoke* or *peak*, and the same to utter and sell to any of the inhabitants of this province, and no farther or otherwise. This licence to endure until I shall signify the contrary. In witness whereof, I have hereunto set my hand and seal this 30th of December, 1637.

LEONARD CALVERT."

Also, the following license, from the same book, p. 32, but more correct in the old book, entitled, "*Council Proceedings from 1637 to 1644*."

"7th June, 1638. The bearer hereof captain Henry Fleete is hereby licenced to trade with any Indians for corn or *roenoke* to buy corn, either within this province of Maryland, or on any part of the southern shore below Patowmack town; Provided, that he bring the said corn into this colony, to be used and expended in the colony.

JOHN LEWGER, *Secretary*."

"The same license granted to James Cloughton, July 9th."

The "southern shore" of the Patowmack must have been what is now deemed the Virginia shore of that river, and "Patowmack town" was what is now called Marlborough; but we may suppose, that as that part of Virginia was not then inhabited by the English, it was not considered as any infringement upon the rights of the Virginians; or, it is possible, that the Maryland government might have been authorized by that of Virginia to grant licences in such cases.

NOTE (XVII.) p. 78.

The following commission, (extracted from "*Council Proceedings from 1636 to 1657*," p. 30,) exemplifies those issued for the purposes mentioned in the text.

"Cecilius, &c., to our trusty Cuthbert Fenwick, of St. Mary's, gent., greeting:—These are to authorise you to question all persons, whom you shall find unlawfully trading within our province of Maryland, or shall find cause to suspect that they have traded or attempted to trade with the Indians without license from or under us first had and obtained, and the persons so offending, together with all such truck as you shall find with them, to attach and keep in safe custody, until you shall receive further order therein from us or our lieutenant general. And whereas we are informed, that there is a *wreck* happened on the eastern shore within our province, we do further hereby authorise you to inquire and examine touching the said *wreck*, and whether any untimely death of any person hath happened therein, and by what means, and if you shall find any such wreck to have happened, to take an inventory of the vessel, wreck, and of all goods therein being or belonging to her, and the same to seize to our use, and deliver to our receiver-general forthwith upon your return to St. Mary's, and for so doing this shall be your warrant. Given the 26th of April, 1638."

The following, (extracted from the old thin book, entitled, "*Council Proceedings from 1637 to 1644*,"") appears to be a *return* to the aforesaid writ or commission.

"*The report of Cuthbert Fenwick, taken the 8th of May, 1638.*

Who saith, that inquiring after the boat, that was said to be cast away on the eastern shore, he learned, that it was the boat of one Rowland Williams of Accomack; and that he was killed by the Indians of these parts; and one other who was in the boat with him; and he was told by the young king of Wirowammen, that it was the —*—, or the —*—, or both; and that the king of Patuxent was within six miles of the place, where it was done, and that, within

* The names here are not legible in the record.

two or three days after the slaughter, the said king hurried away the truck and boat to Patuxent."

A commission, similar to the former part of the preceding one, had issued in the February preceding to William Brainthwayte, "to seize vessels unlawfully trading with the Indians within the province, or *passing through the same*." See "Council Proceedings from 1636 to 1657," p. 27.

It is probable, that the men murdered in the boat, just mentioned, were unlawful traders from Virginia.

NOTE (XVIII.) p. 78.

License to trade without the Capes.

"Cecilius, lord proprietary of the provinces of Maryland and Avalon, lord baron of Baltimore, &c., to all persons, to whom these presents shall come, greeting: Know ye, that we, for divers good considerations us thereunto moving, have given and granted, and by these presents do give and grant unto the bearer hereof, Thomas Games, mariner, full and free power, liberty, and authority, to pass and transport himself, and his vessel, out of our province of Maryland and through any parts thereof, to trade and commerce for corn, beaver, or any other commodities, with the Dutchmen in Hudson's river, or with any Indians or other people whatsoever being or inhabiting to the northward without the capes commonly called cape Henry and cape Charles, willing and requiring the said Thomas Games not to sell or barter, or otherwise give or lend, any arms, powder, or ammunition, unto any Indian or foreigner. This license to continue in force for one year. Given at our fort at St. Mary's, 12th February, 1637."

From "Council Proceedings from 1636 to 1657," p. 26.

NOTE (XIX.) p. 83.

Commission to Sir William Russell, knight, and others.

[Hazard's Collections, vol. 1, p. 373.]

Charles, by the grace of God, king of England, Scotland, France, and Ireland, defender of the faith, &c.: To our trusty and well beloved Sir William Russell, knight and baronet, Sir William Uvedale, knight, Sir Dudley Digges, knight, Sir John Wolstenholme, the elder, knight, Sir Sampson Darell, knight, Sir John Wolstenholme, the younger, knight, Sir Abraham Dawes, knight, Sir John Jacob, knight, Henry Garnway, of London, alderman, Anthony Abdy, of London, alderman, John Latch, and John St. Almond, esquires, Isaac Jones, Marmaduke Royden, Robert Oxnick, John Slang, and Philip Burlamacky, of London, merchants, Edward Ditchfield, of London, merchant, Reuben Borne, and George Brumley, of London, grocers. Whereas, not long since, by our several proclamations, we have declared our royal pleasure concerning the importing of all sorts of tobacco growing upon our English plantations to the port of London; with strict charge and commands to our several officers to see the same performed accordingly; and also have, for divers reasons expressed in the said proclamations, confirmed and renewed our straight commands, and directions, to all our justices of assize, our justices of peace, our mayors, sheriffs, and all other our officers of our several counties, in their several places, to be aiding and assisting to those we have and shall employ for the depressing and rooting out of all English tobacco lately planted and growing in divers places of our realm of England, and Ireland; which said proclamations being duly executed, will no doubt much advantage the benefit of the said foreign plantations, as also a better conformity in the orderly payment of our custom and impost usually paid us for the same. Yet having of late received credible information that many of the said planters residing upon the said colonies, have and are still likely to suffer under the burden of many oppressions occasioned by the secret and indirect trade of particular

merchants and shopkeepers, who make a prey of them and their labours, by supplying their necessities with commodities at such unreasonable rates, that they are usually forced to pay fifty or sixty pounds weight of tobacco for a pair of shoes, with such like unconscionable advantages in several other merchandizes, that the poor planters have had scarce necessities for their bodies, but have engaged the most part of their crops beforehand, to their said merchants and shopkeepers, in so much that they only labour and toil to enrich those that thus work upon their necessities, without any ability either to satisfy us our ordinary duties, or to apply themselves to more noble and stable commodities whereby they may become of consequence to our crown of England; which unjust and unconscionable course of the said merchants and shopkeepers (as we are likewise informed) have some years past been so grievous unto the said planters, that they have, contrary to expectation, been forced, not only to petition for abatement of our ordinary customs and imposts, but have in extreme necessity begged their bread from door to door, without any help or relief from the said merchants and shopkeepers: by which means, and out of the woful experience of their miseries, they have been of late years compelled to offer their tobacco to divers of the merchants of London, tendering unto them a contract for some term of years, which being refused, they have since been forced to send the most part of their tobacco for foreign parts, without any payment of our ordinary duties, any regulation either in quality or quantity of tobacco, or any respect to us or our dominions, from whence they have annual support of men, munition, and provisions, and this contrary to our royal command in our several proclamations, and several orders of our council in that behalf; by all which, and other indirect and disorderly proceedings in the said plantations, we apparently see the danger of their utter ruin, besides the loss of those just profits that do belong unto us. And, being lately solicited by divers of that body, (who do sensibly groan under the burden,) to take all these grievances into our royal consideration. And, finding, that in their infancies, as yet the chiefest commodity that must support and enable them to more stable commodities, is this of tobacco, for which, if they fail of an indifferent and reasonable rate, the said planters must wholly be disabled and impoverished. Having advised with our lords and others of our privy counsel, we are resolved, and our will and pleasure is, to have hereafter the sole pre-emption of the said tobacco growing upon our said plantations; and that at such rates and prices as shall be found fit, (having respect to the support of the said colonies; and being moved to make choice of some fit and able persons who have experience of the value and quality of the said several sorts of tobacco, as also of the condition of the present state of the said plantations, and have observed the great necessities and miseries they have endured by the irregular planting and ordering thereof, and unconscionable practices put upon them in the sale thereof: Know ye, therefore, that we reposing especial trust and confidence in your fidelity, long experience, and diligence, have nominated, constituted, and appointed, willed and required, and by these presents do nominate, constitute and appoint, will and require you, the said sir Wm. Russell, sir Wm. Uvedale, sir Dudley Diggs, sir John Wolstenholme, the elder, sir Sampson Darell, sir John Wolstenholme, the younger, sir Abraham Dawes, sir John Jacob, Henry Garaway, Anthony Abdy, John Latch, John St. Almond, Isaac Jones, Marmaduke Royden, Robert Oxwick, John Slang, Philip Burlamachy, Edward Ditchfield, Reuben Burne, and Geo. Brumley, to be our commissioners:—Giving, and by these presents granting unto you, and unto any seaven or more of you, (whereof you, the said sir John Wolstenholme, the elder, sir John Wolstenholme, the younger, sir Abraham Dawes or sir John Jacob, to be one,) full power and authority to call before you all such person and persons as have any interest in the plantations of Virginia, Bermudas, the Caribe islands, or any other of our English colonies, and ac-

quanting them with this our royal will and pleasure, to require them to declare unto you, or any such seaven or more of you, their several interests, and to demand and know what quantities of tobacco they have upon their several plantations, what they expect upon their returns, and when they shall have the same: And in our name to treat and contract with them, either in part or company, for their several quantities; that their several quantities being taken off at reasonable rates, and in different days of payment, they may bring no interruption in our intended contract with the planters themselves, upon the said plantations: And because many of them upon some private end may seem unwilling to make this contract, alleging that the planters inhabiting in the said colonies are the chief owners and ingrossers of the said tobacco, and that there is little belonging to them, but for satisfaction of several parcels of goods and wares which they have served into those colonies, for which they have no payment but by tobacco, These are to require you and authorise you, and any such seaven or more of you, to assure, on our behalf, the said planters and owners, that we are now sending our commission into every of the said plantations to treat and conclude the contract there; and that we hold it fitting, first to begin at home, that the said planters may see we have omitted nothing that shall conduce to this service, or that may take away any obstacles there upon pretences of debts or otherwise. And if any of the said debts shall appear to be of so great value, you are likewise to enquire of the condition of them, and whereupon they grow, that if it shall be found just and fitting, we may give order to examine the same there also, and to regulate such order to the merchants and shopkeepers here as shall be reasonable for their gain, and not now oppressive and burthensome to the said poor planters. And because the season calls upon a dispatch in this business; and that we may be the better informed of all difficulties that may arise in the same, Our will and pleasure is, that you forthwith give us an account of your proceedings and conclusions herein: And if any opposition be made, as in all business of this nature the beginnings are full of doubts and interruptions, our will and pleasure is, that you certify unto us the names of such that are refractory to our commands; and if they shall demand greater rates than you on our behalf shall think fit to be given, or shall make any other pretences why they should not submit themselves to this our royal pleasure, wherein our aim is not for our own private profit, as for the support of our said colonies and preservation of our subjects who live and reside there: Our will and command is also that you, or any such seaven or more of you certify together with such their refusal the reasons they offer for the same, to the end that we may perceive what can be objected against this our royal intention: And because our desire is to have all expedition in this contract, and to proceed abroad upon the said plantations with the same expedition we go at home; Our will is, and we do require you to give such attendance upon this our service, that we may have this our commission returned unto us before the fourteenth day of July next; and herein to consider of all such occurrences that as well here as upon the said plantations may fall out for the advancement of this our service, together with the prices you shall think requisite to be given; the days of payment you shall agree for, with the quantities and qualities of each plantation to be yearly allowed; and for what term of years the said contract shall continue; and by what means it may be best effected, and the said tobacco orderly brought into our said port of London, from whence all domestique and foreign parts are to be supplied; with such other incident considerations as this our service shall require, that accordingly we may immediately dispatch our said commission to the said plantations, and make a settlement of this business, for the more speedy relief of our said poor subjects, and the full performance of this our pleasure and command. In witness, &c., witness ourself at Westminster, the nineteenth day of June, in the tenth year of our reign.

Per Breve de Privato Sigillo.

NOTE (XX.) p. 85.

"The *process* against William Lewis, Francis Gray, Robert Sedgrave," &c. [Copied from the oldest record book in the council chamber of Maryland, entitled, "Council Proceedings from 1637 to 1644." N. B. The pages of this book are not numbered.]

"On Sunday, the first of July, William Lewis informed captain Cornwaleys that certain of his servants had drawn a petition to Sir John Hervey, and intended at the chapel that morning to procure all the Protestants' hands to it. Whereupon the captain (calling unto him Mr. Secretary) sent for Robert Sedgrave, (one of the parties informed of) and examined him thereof, who confessed he had drawn a writing and delivered it to Francis Gray, who being likewise examined, had the writing in his bosom and delivered it to the captain. The writing was of this tenor:

CHRISTOPHER CARNOLL, ELLIS BEACHE, RD. SEDGRAVE,
and others which may hereafter be brought forth:

Beloved in our Lord, &c. This is to give you notice of the abuses and scandalous reproaches which God and his ministers do daily suffer by William Lewis, of St. Inigoes, who saith that our ministers are the ministers of the devil, and that our books are made by the instruments of the devil, and further saith that * * who are under his charge shall keep nor read any book which doth appertain to our religion within the house of the said William Lewis, to the great discomfort of those poor bondmen who are under his subjection, especially in this heathen country, where no godly minister is to teach and instruct ignorant people in the grounds of religion. And as for people who * * unto the said Lewis or otherwise, to pass the week, the said Lewis takes occasion to call them into his chamber, and there laboureth with all vehemence, craft and subtilty, to delude ignorant persons. Therefore we beseech you, brethren in the Lord and Saviour Christ Jesus, that you who have the power, that you will do in what lieth in you to have these absurd abuses and ridiculous * * to be reclaymed, and that God and his ministers may not be so grievously troden down by such ignominious speeches; and no doubt but you or they who strive to uphold God's ministers and word * all be crowned with eternal joy and felicity, to reign in that eternal kingdom with Christ Jesus, under whose banner we fight for evermore.—(All which words aforesaid which have been spoken against William Lewis, the parties hereunder written will be deposed when time and opportunity shall be thought meete.)

And being further examined touching the intent of the writing, Francis Gray said that he was not acquainted with the writing till it was delivered in to him by Robert Sedgrave, and that he had not as yet read it; and that Robert Sedgrave desired him to publish it to some of the freemen, to the intent only to procure them to join in a petition to the governor and council of this province, for the redressing of those grievances which were so complained of in the writing. Whereupon the captain willed them to attend again in the afternoon, and to bring security for their answering the matter at the court; and in the mean time to demean themselves quietly and soberly. And in the afternoon the captain and Mr. Secretary bound them over with two sureties to answer it at the next court.

On Tuesday, 3d July, the sheriff was commanded by warrant from the governor to bring William Lewis, Robert Sedgrave, Francis Gray, Christopher Carnoll and Ellis Beache into the court, where were present the governor, the captain, and Mr. Secretary. The governor demanded of Robert Sedgrave whether that was his writing, and he confessed it. He demanded further touching the intent of the writing; and he answered as afore; and being demanded who

moved or advised him to that course, he said that himself and Francis Gray being much offended with the speeches of William Lewis, Francis Gray did wish to draw a writing to some of the freemen, and he would procure them to join in a petition to the governor and council, which the said Robert Sedgrave did accordingly the next day ; but Francis Gray wished him to keep it till he had spoken with Mr. Copley ; which was on Saturday, the last of June ; and on Sunday morning, meeting with Francis Gray at the fort, he asked him whether he had spoken with Mr. Copley, who said he had, and that Mr. Copley had given him good satisfaction in it, and blamed much William Lewis, for his contumelious speeches and ill-governed zeal, and said it was fit he should be punished, and Francis Gray asked him for the writing and put it up, and were going with it to the chapel, when the captain called them in by the way. And Francis Gray being examined confest that he did wish him to draw a writing, to be delivered to two or three of the freemen, and his reason was because the said servants had no knowledge what to do in it, nor could so well go to the governor to move for redress as the freemen could.

Then were the complaints contained in the writing against William Lewis taken into examination. And touching the first, Ellis Beache did depose that William Lewis coming into the room where Francis Gray and Robert Sedgrave were reading of Mr. Smith's sermons, William Lewis said that the book was made by the instrument of the devil. And Robert Sedgrave being demanded whether William Lewis spake in general of Protestant books, or of that book in particular—said he could not well remember whether he spake of books in general. And William Lewis being put to his answer, confessed that coming into the room where they were reading of a book, they read it aloud, to the end he should hear it ; and that the matter being very reproachful to his religion, viz. that the pope was anti-Christ, and the Jesuits anti-christian ministers, &c.;—he told them that it was a falsehood, and came from the devil, as all lies did, and that he that writ it was an instrument of the devil, and so he would approve it ; and further he said not.

Touching the second, it was deposed by two witnesses, that William Lewis said that their ministers (innuendo the Protestants,) were the ministers of the devil.

Touching the third, Robert Sedgrave said at first that William Lewis did forbid them to use or have any Protestant books within his house ; which being denied by William Lewis, and that he had expressly given them leave to use or have books, so they read them not to the offence or disturbance in his own house ; and that he spake only touching that book then in reading ; Robert Sedgrave said that he was not certain, whether he forbade them that book only, or all other books. And Richard Duke (a witness produced by Francis Gray, and a Protestant,) being sworn, said, that William Lewis said that Francis Gray should not read that book in his house, nor no such base fellows as he was ; but no more or further as he heard. Then was Christopher Carnoll and Ellis Beache examined upon oath, and they likewise testified touching the forbidding of that book, but not any further as they heard.

Then was it alleged by William Lewis, that the intent of the writing was to combine the Protestants together, and to send a petition under all their hands to the governor and council of Virginia, that they would send * * for William Lewis, and proceed against him for a traitour ; and he offered to prove by one then present, that heard James Thornton say, that they declared further their intent in his hearing ; but it being refused by the governor as an insufficient proof, and the party himself demanded that heard the words ; it was answered, that he was gone out a trading the day before ; Whereupon the governor thought fit to defer their trial and censure till the witness could be produced in court,

and in the mean time willed the secretary to deliver his censure touching the complaint against William Lewis.

And the secretary found him guilty of an offensive and indiscreet speech in calling the author of the book an instrument of the devil; but acquitted him from that he was charged with all in the writing—that he used that speech touching Protestant ministers in general. He likewise found him guilty of a very offensive speech, in calling the Protestant ministers the ministers of the devil. He likewise found him to have exceeded in forbidding them to read a book otherwise allowed and lawful to be read by the state of England; but he acquitted him of the accusation that he forbade the servants to have or use Protestant books in his house; and because that these offensive speeches, and other his unreasonable disputations in point of religion, tended to the disturbance of the public peace and quiet of the colony, and were committed by him against a public proclamation set forth to prohibit all such disputes; therefore, he fined him in 500 weight of tobacco to the lord of the province; and to remain in the sheriff's custody until he found sufficient sureties for his good behaviour in * * in time to come.

The captain likewise found him to have offended against the public peace and against the proclamation made for the suppressing of all further disputes tending to the opening of a faction in religion: and therefore fined him likewise 500 lbs. tobacco to the lord of the province; but for his good behaviour thought fit to leave it to his own discretion. The governor concurred wholly in this sentence with the secretary. And so the court broke up, and William Lewis was committed to the sheriff.

Afterward he found security for his good behaviour; and was bound as follows:

3 July, 1633.—William Lewis, John Medcalfe, and Richard Browne, acknowledged themselves to owe unto the lord proprietary 3000 lbs. weight of tobacco to be paid unto the said lord proprietary, or his heirs, or officers, on the 10th of November next, in case the said William Lewis shall offend the peace of this colony, or of the inhabitants thereof, by incautious and unnecessary arguments or disputations in matter of religion; or shall use any ignominious words or speeches touching the books or ministers authorized by the State of England.

Recogn. coram me
JOHN LEWGER, Secretary.

Signed WILLIAM LEWIS,
JOHN MEDCALFE,
RICHARD BROWNE.

NOTE (XXI.) p. 102.

The act of 1638, ch. 1, copied from the record book, in the office of the present court of appeals, entitled, "Lib. C. & WH." p. 61.

"*Memorandum.* That at the first meeting of the assembly, on the 25th of February, 1638, was enacted and ordained one act as followeth.

An act for the establishing the house of assembly and the laws to be made therein.

Whereas the king's majestie by his letters patents hath given and granted full free and absolute power and authority to the lord proprietary of this province to make and ordain any laws appertaining to the state of this province, by and with the advice assent and approbation of the freemen of the same or of the greater part of them or of their delegates or deputies, and to that end to assemble the said freemen or their delegates or deputies in such sorte and forme as to the said lord proprietarie should seem best;—By virtue whereof several writs of summons have been directed to certain gentlemen to appear personally at this assembly, and to the rest of the freemen inhabiting within the several hundreds of this colony and the isle of Kent, to elect their delegates or deputies in their

names and steads to be present at the same, and accordingly all the freemen of the said several hundreds and of the isle of Kent (some few excepted) have elected certain persons to that end, and the same their election have subscribed and returned upon record, and their said delegates and deputies are now assembled accordingly. Be it therefore enacted and ordained by the said lord proprietarie of and with the advice assent and approbation of the freemen and of the delegates and deputies assembled at this present assembly, that the said several persons, so elected and returned as aforesaid, shall be and be called burgesses, and shall supply the places of all the freemen consenting or subscribing to such their election in the same manner and to all the same intents and purposes as the burgesses of any borough in England in the parliament of England useth to supply the place of the inhabitants of the borough whereof he is elected Burgess, and that the said gentlemen and burgesses and such other freemen (not having consented to any the elections aforesaid) as now are or shall be at any time assembled or any twelve or more of them, (whereof the lieutenant general and secretary of the province to be alwaies two,) shall be called the house of assembly, and that all acts and ordinances assented unto and approved by the said house or by the major part of the persons assembled, and afterwards assented unto by the lieutenant general, in the name of the said lord proprietarie, and shall be adjudged and established for laws to all the same force and effect as if the said lord proprietarie and all the freemen of this province were personally present and did assent to and approve of the same.

Which bill being read and passed by all the gentlemen and freemen present, they did consent it should be underwritten by the secretary in these words :

[The freemen have assented to this bill, that it was engrossed and published under the great seal.]

Then the lieutenant generall Leonard Calvert esqr., being demanded by the secretary whether he did assent to the said bill for and in the name of the lord proprietarie, answered yea, and willed that his assent should be underwritten to it in these words :

[The lieutenant generall in the behalf of the lord proprietarie willeth, that this be a law.]

And it was published under the great seal the twelfth of March, 1638."

NOTE (XXII.) p. 111.

"An act for swearing allegiance." (1638-9, No. 2.) [Copied from a record book in the office of the present court of appeals, entitled, "Lib. C. & WH." p. 1.]

"Sect. 1. Every person of the age of eighteen years and upwards, inhabitants, or that shall come hereafter to inhabit within this province, shall within one month next after this present assembly shall be dissolved, or within one month after such person shall land or come into this province, take an oath to our sovereign lord king Charles his heirs and successors, in these words following :

I, A. B. do truly acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king Charles is lawful and rightful king of England, and of all other his majesty's dominions and countries ; and I will bear true faith and allegiance to his majesty, his heirs and lawful successors, and him and them will defend to the utmost of my power against all conspiracies and such attempts whatsoever which shall be made against his or their crown and dignity, and shall and will do my best endeavour to disclose and make known to his majesty his heirs and lawful successors, all treasons and traitorous conspiracies, which I shall know or hear to be intended against his majesty, his heirs and lawful successors. And I do make this recognition and acknowledgment heartily, willingly, and truly upon the faith of a christian. So help me God.

Sect. 2. Any person, to whom the same oath shall be tendered, refusing the same, shall be imprisoned till the next county court, or hundred court of Kent, and if at such court such party shall upon the second tender refuse again to take the said oath, the party refusing shall forfeit and lose all his lands goods and chattles within this province to the lord proprietary and his heirs, and shall be banished the said province for ever, (except women covert, who shall be committed only to prison, until such time as they will take the same oath.)

Sect. 3. The governor (for the time being,) or two of the council, or the secretary, or any judge sitting in court, or the commander of the isle of Kent, shall have power to administer the said oath."

The oath prescribed by the statute of 3 *Jac.* 1, ch. 4, was the same as that in the above bill as far as the words "dominions and countries;" it then proceeds as follows:—"and that the pope, neither of himself nor by any authority of the church or See of Rome, or by any other means with any other, hath any power or authority to depose the king, or to dispose of any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or lease to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty's royal person, state, or government, or to any of his majesty's subjects within his majesty's dominions. Also, I do swear from my heart, that notwithstanding any declaration or sentence of excommunication, or deprivation made or granted, or to be granted by the pope or his successors, or by any authority derived, or pretended to be derived from him or his See, against the said king, his heirs or successors, or any absolution of the said subjects from their obedience: I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him or any of them. And I do further swear, that I do from my heart, abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, that princes which be excommunicated or deprived by the pope, may be deposed or murdered by their subjects or any other whatsoever. And I do believe, and in my conscience am resolved, that neither the pope, nor any other person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion, or secret reservation whatsoever: And I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a christian. So help me God."

NOTE (XXIII.) p. 114.

The warrant or commission to John Harrington, for stopping the contraband trade with the Indians.

"Cecilius, lord proprietary, &c., to John Harrington, greeting; We do hereby authorize and command you to arrest any persons, vessels, or goods, trading or attempting to trade, or traded or attempted to be traded, with any Indians of these parts in or upon any the rivers, waters, or shores of the precincts of our province, without licence from us or our lieutenant, and the same persons, ves-

sels, and goods to have afore us or our lieutenant general at Saint Mary's, as soon as conveniently you may, there to answer for the contempt committed against our ordinance or proclamation published in that behalf, and for so doing this shall be your warrant or commission. Given at St. Mary's, this 6th of March, 1638. Witness, LEONARD CALVERT."

See "Council Proceedings from 1636 to 1657," p. 37.

NOTE (XXIV.) p. 115.

"*An act for trade with the Indians*," (1638, No. 5.)

[Taken from "Lib. C, and WH," p. 3. The same is also in the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658."]

"Whereas the crown of England, (by right of first discovery,) became lord and possessor of this province and other countries thereunto adjoining, so that no subject of his majesty, or any other foreign prince or state whatsoever, might or could lawfully come into these parts to trade with the Indians thereof, without leave or license from or under the said crown of England, according as his majesty's said right is practised, allowed, and acknowledged in all other parts so accruing to the said crown by right of discovery.

And whereas his majesty being so possessed, by his letters patent to the right honourable Cecilius Lord Baltimore, granted and confirmed unto the said Cecilius all this province, with all rights thereunto belonging, saving only the sovereign allegiance due to the crown of England, and him the said Cecilius created absolute lord thereof, who, by virtue of his said lordship, after possession taken of this province, did by public proclamation prohibit all persons whatsoever from trading with any Indians of this province, without leave or license from or under his said lordship first had and obtained; and certain inhabitants thereof offending against the said proclamation, presuming upon former grants and commissions from his majesty, have been punished and proceeded against for unlawful trading without or before such leave or license obtained, and thereof complaining to the king's majesty, were by him referred to the lords of his majesty's most honourable privy council for determining the right and justice of the said complaints, which said lords, after full hearing and debating of the cause, have ordered and confirmed the said lord proprietary's said right of sole trading with the Indians of this province, declaring that no trade with the said Indians ought to be within the precincts of his lordship's patent, without license from his lordship, (as by the said order, bearing date at Whitehall, the 4th of April, 1638, may appear.)* We the freemen of this province, taking into our tender care the right and privilege of his said lordship so granted and declared, and that the presumption of such right and privilege was the main and chief encouragement of the said lord proprietary to undertake the great charge and hazard of planting this province, and to induce the gentlemen and other the first adventurers to come therein with his lordship, by propounding a portion and share thereof unto such as should adventure their persons and estates for the beginning of a plantation here, and being willing and ready to our powers to assist his said lordship in all his rights and privileges by inflicting penalties on all such as shall attempt to violate and infringe the same, in expectance of the like protection and assistance from his lordship, of and for the maintaining and defending of all our rights and liberties.

* See this order at large in note (XI.) preceding. The recital of it in this bill of the assembly is a further confirmation of the authenticity of the order, though its existence has been denied, as before mentioned. This session of assembly occurred within somewhat less time than a year after the date of the order. If no such order had taken place, and it had been "a mere fiction," as alleged, it is not probable, that it would have been here openly stated in this house of assembly. It demonstrates also, that the date affixed to it by Mr. Chalmers, (to wit, April 4th, 1639,) is erroneous, as that date is subsequent to this session.

And further considering how inconvenient it may and is likely to prove to the state of this province, and the peace and plenty thereof, if a promiscuous liberty of trading with the said Indians should be permitted and left open to all persons indifferently, in regard that thereby the price of Indian corn may easily be enhanced, and the store thereof carried out of the province by foreigners in time of our greatest need, and that jealousies, rumours, and false news may be spread amongst the Indians by ill affected persons, to the disturbance of the peace and safety of the inhabitants, and that vessels weakly manned and provided may be and are usually set forth amongst Indians disaffected to this colony, whereby both the men have been and may be destroyed, and the vessels, arms, and ammunition therein taken, converted, and employed to arm the said Indians against us, and have therefore thought it necessary, and do desire that it may be enacted:

And be it enacted, that no foreigner* whatsoever, from and after the end of this present assembly, come into or through any the limits or precincts of this province, to the end to trade with any Indians of these parts, nor unlade or lade any goods or commodities traded or to be traded with or from any such Indians out of or upon any vessel riding or lying in or upon any the waters or shores within the limits and precincts aforesaid without grant or license from the lord proprietary or his lieutenant general, &c., upon pain of confiscation of all vessels and goods trading or attempting to trade, or traded or attempted to be traded, contrary to the intention of this act.—Provided, that it shall be lawful for any inhabitant of this province to trade with any Indians resorting to his plantation for two or three skins or such like small quantity of beaver, (so they inhance not the usual price thereof,) or for any commodities for his use, or provision, without incurring any penalty of this present act.—And further provided, that any inhabitant of this province, putting in security for preventing the disorders and inconveniences above mentioned, (as enhancing the price and carrying out the store of corn, spreading of false news, and going forth weakly provided,) shall have a license (of course) from the lieutenant general or the secretary of the province to trade with any Indians for any corn or other commodities to be used or expended within the province, or to export any corn bought of any Indians through and out of the province at any time when the ordinary price of corn in the province doth not exceed thirty pounds of tobacco for a barrel of corn, any thing in this act to the contrary notwithstanding.”

NOTE (XXV.) p. 121.

Polygamy has been erroneously denominated in the English law books—bigamy; which, strictly speaking, has a very different meaning.—(See 4 *Bl. Com.* 163.) Our earliest legislators, in this bill “for felonies,” have used the correct term. Polygamy was made felony by the statute of 1 Jac. 1, ch. ii., which, according to sir Edward Coke, (3 *Inst.* 88,) was the first act of parliament made against the offence; but, although the statute declares, that the offender “shall suffer death as in cases of felony,” yet, agreeably to the known rules of construction in such cases, as the statute did not expressly take away the *benefit of clergy*, the offence was held to be within that privilege. This statute has been expressly extended to this province by the act of 1706, ch. 8, and is now the law of this state on the subject. If we are correct in supposing, as before mentioned, that this bill “for felonies” was intended to take away clergy from the offences therein enumerated; though the irresistible inference arising from the

* From that part of the *preamble* to this bill, which seems particularly to relate to Clayborne’s claim, it would appear, that the word “foreigner” here was meant to apply to all persons, who were not inhabitants of the province of Maryland, as Virginians, &c., though, strictly speaking, the word “foreigner” could apply only to those who were not British subjects, as the Dutch or Swedes settled on the Delaware.

next bill, entitled, "an act allowing book to certain felonies," among which polygamy is not mentioned, we may then conjecture, that our first colonists, being Catholics, were induced to make the offence of polygamy *punishable with death*, in Maryland, while it was not so in England, from the severity with which the canonists of the church of Rome had treated *bigamy*, which was nothing more than what is commonly called *second marriages*; that is, the marrying either a widow and a virgin, or two widows, or two virgins successively, one after the death of the other. By a canon made at the council of Lyons, in the year 1274, such *bigamists*, (from the proof they thereby gave of their most incontinent dispositions, see *Barrington's Observat.* on the Anc. Stat. p. 166,) were declared, in all cases of crimes committed by them, not to be entitled to the privileges of clergy, and, in confirmation of this canon, the English statute of 4 *Edw.* 1, ch. 5, was made. But at the dawn of the reformation this statute of 4 *Edw.* 1, was repealed by that of 1 *Edw.* 6, ch. 12, sect. 16. Although all the statutes against the authority of the pope or see of Rome, were said to have been repealed by the statute of 1 & 2 *Ph. & Mar.* ch. 8, yet, as the statute of 1 *Eliz.* ch. 1, repealed that repealing statute of *Ph. & Mar.*, the statute of 1 *Edw.* 6, is said to have been thereby revived. See 2 *Hale's Hist.* 372. Thus laws vacillate with the change of *religious* as well as *political* parties.

NOTE (XXVI.) p. 114.

"*An act determining enormous offences.*" (1638-9, No. 25.)

Be it enacted by the lord proprietary of this province, of and with the advice and approbation of the freemen of the same, that these offences following in this act, and no other, shall be adjudged enormous offences within this province, that is to say:—Perjury, which is false answer or witness given upon oath in a court of record, not to the endangering of another's life;—Subornation of perjury, which is the hireing or persuading of another to commit such perjury; Conspiracie, which is unlawful combination for two or more persons against another's life, fame, or goods;—Scandalous or contemptuous words or writings to the dishonour of the lord proprietarie or his lieutenant generall for the time being, or of any of the council;—Exercising within the province any jurisdictions or authority which ought to be derived from the lord proprietarie, without lawful power or commission from or under him;—Contempts and misdemeanors against lawful ordinances or proclamations;—Abuses of public judges or officers;—Unlawful assembly, which is the disorderly meeting of three or more persons in a company to commit with force an unlawful act;—Forgery, which is the counterfeiting of deeds;—Or, to acknowledge any fine, deed, recognizance, or bill in the name of another not privy or consenting to the same;—Deceit or cosenage, which is the damageing of another by some undue slight;—False news, which is the spreading of false reports, to the disturbance of the peace or duty of the people;—Bribery, which is the accepting of or contracting for a reward for doing of justice;—Extortion, which is the taking or demanding greater fees than are limited by the law in such things as are bylaw provided for;—Oppression, which is the undue use of power and authority to the unjust grievance of another;—Using false weights or measures;—Tendering in payment unsound tobacco, and such unsound tobacco shall be burned;—All injuries done to an Indian in person or goods;—Servants marrying without giving satisfaction to the master or mistress;—Harbouring by night, or cloeking of another's servant without the knowledge and consent of the master or mistress;—Transporting out of the province, or over the bay of Chesapeake, or among the Indians, (without pass from the lieutenant generall or the secretary for the time being, or the commander of the isle of Kent,) any servant, or any person indebted or obnoxious any way to the justice of the province, knowing or having reason to know or

suspect him to be so engaged or obnoxious, or having notice given that he is so, Provided that no passe shall be given till after publique notice given aforehand of the person desiring such passe, and of his intent to depart out of the place, or till after security given for the payment of all debts within the province, or till after pardon of any fault whereof he is chargeable, nor shall be given by the lieutenant generall or secretary till after the said conditions performed at St. Maries;—forestalling, ingrossing;—This act to continue till the end of the next general assembly.” Lib. C & WH. p. 48.

NOTE (XXVII.) p. 129.

* The following form of licensing marriages, (of which there appear many others in the book in the land office, entitled, *Liber No 1*,) exhibits the mode of contracting marriages in the early settlement of the province, and illustrates the clause of this bill stated in the text.

“November 2d, 1638. This day came William Lewis, planter, and made oath, that he is not precontracted to any other woman than Ursula Gifford, and that there is no impediment of consanguinity, affinity, or any other lawful impediment to his knowledge, why he should not be married to the said Ursula Gifford; and further he acknowledgeth himself to owe unto the lord proprietary 1000 lb. tobacco in case there be any precontract or other lawful impediment whatsoever as aforesaid, either on the part of the said William Lewis or the said Ursula Gifford.

WILLIAM LEWIS.

“Whereupon a license was granted him to marry with the said Ursula.”

Although *precontract* was held to be a ground of divorce even by the reformed Church of England at the time of making this bill, (1639,) yet, it may be remarked in illustration of the above, that this was one of the first complaints at the commencement of the reformation against the Church of Rome, and dictated the statute of 32 *Hen.* 8, ch. 38; entitled, “for marriages to stand notwithstanding precontracts;” in which act, (to please Henry, without doubt, who was sorely vexed with the court of Rome upon the subject of marriages,) copious invectives are thrown out against “the bishop of Rome,” for “the enormity of avoiding marriages by precontract.” It seems, however, that in the next reign, though the reformed church still ruled, “divers inconveniences, intolerable in manner to christian ears and eyes,” are stated to have “followed thereupon,” that is from the statute of 32 *Hen.* 8, as appears in the preamble to the statute of 2 & 3 *Edw.* 6, ch. 23, which was made to repeal the said act of 32 *Hen.* 8, as to *precontract* only; and again, in the Catholic reign of queen Mary, the act of 32 *Hen.* 8, was expressly and totally repealed by the statute of 1 & 2 *Ph. & Ma.* ch. 8, entitled, “an act repealing all articles and provisions made against the See Apostolick of Rome.” The act of 32 *Hen.* 8, was, however, on the restoration of the reformed religion, revived by that of 1 *Eliz.* ch. 1, except as to *precontracts*; as to which, it was to stand repealed by the before mentioned statute of *Edw.* 6. It was somewhat extraordinary, that this ground of divorce was not taken away until the year 1753, by the statute of 26 *Geo.* 2, ch. 33, commonly called the marriage act.

The mode of regulating marriages, prescribed by this bill of our provincial assembly, seems to have been in pursuance of the canons of the Church of England; though, perhaps in this respect, those of the Church of Rome were not materially variant therefrom. By the CI. canon, (see the canons of the Church of England, constituted in the year 1603,) “no faculty, or license, shall be henceforth granted for solemnization of matrimony betwixt any parties without thrice open publication of the banns by any person exercising ecclesiastical jurisdiction; but the same shall be granted” (without banns) “only by such as have episcopal authority, &c., and unto such persons only as be of good state

and quality, and *that upon good caution and security taken.*" By the CII. canon, "the security mentioned to be taken shall contain these conditions : First, that at the time of the granting every such license, there is not any impediment of precontract, consanguinity, affinity, or other lawful cause to hinder the said marriage." By the CIII. canon, "For the avoiding of all fraud and collusion in the obtaining of such licenses and dispensations, we farther constitute and appoint, that before any license for the celebration of matrimony without publication of banns be had or granted, one of the parties shall personally swear, that he believeth there is no let or impediment of precontract, kindred, or alliance, or of any other lawful cause whatsoever, to bar or hinder the proceeding of the said matrimony, according to the tenor of the foresaid license."

NOTE (XXVIII.) p. 130.

There were two kinds of *purgation* in use in England,—the *vulgar* and the *canonical*. The *vulgar* purgation was an appeal to what was called the *judicium die*; such as the trial *per ordeal* of either fire or water,—the *corsned*, and the trial *per bataille*. As these modes of trial were long before this period (1639) antiquated and disused in England, it is most probable, that the *canonical* purgation was here alluded to. This species of purgation was borrowed from the Roman civil law by the Canonists, and introduced into England by the Papal hierarchy. This mode of trial was, by putting the party, accused of a crime, to his own oath, as to his guilt or innocence, together with that of a certain number of compurgators attesting, in case of his denial of the accusation, their belief in the truth of what he swears. Persons accused before the temporal tribunals of crimes, wherein the *benefit of clergy* was allowed, upon prayer thereof, were delivered to the ordinary, before whom he was to be tried according to the ecclesiastical law, that is, by *canonical purgation* as above mentioned. But, it being perceived, that this opened a door to innumerable perjuries, it was in such cases, (that is, where benefit of clergy was claimed,) taken away by the statute of 18 *Eliz.* ch. 7, sect. 2. It would appear, however, that this statute did not take away this mode of trial in the ecclesiastical courts altogether, for, in crimes that were of spiritual cognizance only, such as heresy, they were still at liberty to tender what was called the oath *ex officio*, whereby the party was compelled to confess, accuse, or purge himself of the crime with which he was charged. This mode of proceeding was exercised in a most arbitrary manner by the *high commission* court, before mentioned, during the reign of James the first, and in many cases in the early part of the reign of Charles to the present period of which we are now treating; when the parliament, held in the year 1640, having in a great measure humbled the monarch, as well as the high church party, abolished the high commission court by the statute of 16 *Car.* 1, ch. 11, and prohibited any ecclesiastical court from proceeding by the oath *ex officio*; which court and proceedings had contributed greatly to bring on the disastrous events which ensued. On the restoration of Charles the second, when it was thought proper to revive some of the powers of the ecclesiastical courts by the statute of 13 *Car.* 2, ch. 12, this mode of proceeding, by administering the oath *ex officio*, was further and finally prohibited. See Clarke's *Praxis in Curris Ecclesiasticis*, titul. 324, and 3 *Bl. Com.* 106. It seems at first, therefore, to be matter of surprise, that our colonists should wish to adopt, especially in temporal offences, so odious a mode of trial as that of *purgation*. But, when we reflect, that they were Catholics, and that it was a mode of trial to which the Romish church in English had been much attached, their wish to adopt it becomes easy to be accounted for.

NOTE (XXIX.) p. 132.

In another part of the records I find this act mentioned, as entitled, "an act for the erecting of a *pretorium*;" which is certainly the more classical term, and agreeable to that used in the *latin* copy of the charter; as appears from the following clause in the section of that grant, wherein lord Baltimore was empowered to institute courts of justice:—"Ceteraque omnia alia et singula ad justitia complementum, curiasque, *prætoria*, et Tribunalia, judiciorum formas et procedendi modos, pertinentia, etiam si deillis expressa in presentibus non fiat mentio, ac in Curris, *prætoriiis*, et tribunalibus illis, in actionibus, sectis, causis et negotiis quibuscunque, tam criminalibus quam personalibus, realibus et mixtis ac *prætoris* procedendi placita tenendi et terminandi per judices per ipsos delegatos liberam plenam et omnimodam tenore presentium concedimus potestatem." The words,—"*curias, prætoria, et tribunalia*,"—are expressed in the translation of the charter in *Bacon's* laws by the words,—"*courts, prætorian Judicialories, and tribunals*." The office of *pretor*, among the ancient Romans, is well known to have been that of a judge. There were two for the city of Rome. After they had extended their conquests over foreign countries, and reduced them to provinces, an additional number of pretors were created, and one appointed to each province. Each *pretor* of a province acted, not only as *judge*, but as a *governor* of that province. Hence, Cicero, in one of his orations against *Verres*, after a fine strain of invective against this corrupt pretor of Sicily observes,—"*Ejusdemmodi totum jus prætorium, ejusdemmodi omnis res judiciaria fuit in Sicilia per triennium, Verre pretore*." The word *pretorium* is sometimes also used substantively for the palace or hall of the pretor, where he held his court and heard causes. We thus discern the prototype, as it were, of that ambiguous character, with which the governors of the English provinces were mostly invested,—of acting as the chief *judiciary* as well as *executive* officer of the province, of being chief *judge* as well as *governor*.

NOTE (XXX.) p. 137.

Lent was a portion of time set apart for mortification by fasting, introduced in the early periods of christianity by the ancient Catholic church. But most of the reformed sects consider it as a superstitious institution, and reject it. The Church of England, however, not so furiously bent on beating down at once all the old institutions of the primitive christians, among other customs and usages of the ancient church, thought it proper, at the commencement of the reformation, to preserve that of *fasting*, or abstinence from flesh at prescribed periods of time. Accordingly, the statute of 2 & 3 *Edw.* 6, ch. 19, was made, entitled, "an act touching abstinence from flesh in Lent, and other usual times." From the preamble to this statute, as well as that of some subsequent statutes on the same subject, it would appear, that motives of political policy, as well as the principle—that "godly abstinence was a mean to virtue," prompted to the preservation of this religious usage. The preamble states, that "considering also that fishers, and men using the trade of living by fishing in the sea, may thereby the rather be set on work, and that by eating of fish much *flesh shall be saved and increased*." After repealing all former statutes, constitutions, and usages concerning fasting or abstinence from meats heretofore made or used, it enacts, "that no person shall eat any manner of flesh upon any Friday or Saturday, or the Embring days, or in any day in the time commonly called *Lent*, nor at any such other day as is or shall be at any time hereafter commonly accepted and reputed as a fish day, within this realm of England, under the penalty of forfeiting 10 s. and also to suffer imprisonment for ten days, during which time he is to eat no manner of flesh." The fifth section provides for granting *licenses* to eat flesh in the times prohibited, in such "cases of infirmity" as are alluded to in our

bill or act of assembly, to wit, to sick persons and women with child. Again, a similar policy of converting religious prejudices into public benefits was adopted by that wise and excellent princess queen Elizabeth. By the statute of 5 *Eliz.* ch. 5, entitled, "an act touching politick constitutions *for the maintenance of the navy*," it was enacted, that, "it shall not be lawful to eat any flesh upon any days now usually observed as fish days, or upon any now newly limited to be observed as fish day." Lest this should be misunderstood by some good protestant subjects, it was expressly stated in the 39th section thereof, to be "intended and meant *politickly* for the increase of fishermen and mariners and repairing of port towns and navigation, and not for any superstition to be maintained in the choice of meats. Those, who preach to the contrary shall be punished as spreaders of false news." As these English statutes were in force at the time of this session of assembly in 1639, they, probably formed that "law of England" upon the subject, alluded to in the above mentioned bill, which, however, repealed the observance of Wednesdays as fish days, newly introduced by the statute of Elizabeth.

NOTE (XXXI.) p. 140.

"An act for the government of the isle of Kent." (1638-9, No. 13.)

"The island, commonly called the isle of Kent, shall be erected into a hundred, and shall be within the county of St. Mary's, (until another county shall be erected of the eastern shore, and no longer,) and shall be called by the name of Kent hundred; and the commander of the said island from time to time appointed by the lord proprietary or his lieutenant general, shall be a justice of peace within the said hundred, during such time as he is commander, with all power and authority to a justice of peace belonging by the laws of this province; and the said commander shall appoint some one to be clerk or register for the recording of all matters pertaining to that office; and the said commander and register for the time being, shall be a court of record, and shall be called, the hundred court of Kent; And all matters and causes whatsoever civil or criminal, (except wherein the said commander is a partie,) happening or arising by or between any inhabitants of the said island, or wherein any inhabitant of the said island is defendant, and determinable in the county court, shall or may be heard and determined by and before the said commander in the said hundred court, and the said court shall have power to use and exercise all the same and the like powers and jurisdictions, and to issue and award all processe necessary for the bringing of any cause to a trial and executing of judgment therein, as may be used and exercised, issued or awarded by or out of the county court, and the said processe or writs shall issue in the name of the lord proprietary with the *teste* of the commander, and shall be signed by the said commander or register, and shall or may be directed to the parties themselves or to the high constable of that hundred from time to time to be appointed by the lord proprietary or his lieutenant general or the said commander or otherwise to any other person where the said high constable is a partie; and the same or the like forms of proceedings shall be used and observed in this court as is or may be used and observed in the county court of St. Marie's by the laws of the province as near as the said commander and register shall be able to judge, and all questions of law shall be decided by the said commander (with advice of the register,) and all issues of fact shall be tried by the commander, (if both parties consent,) or otherwise by any seven or more freemen, inhabitants within the island, to be returned by the said high constable, and such judgments shall be given in all causes in this court, as are most agreeable to the laws of the province or otherwise to the judgments usually given in the same or the like causes in the county court, as near as the said commander with advice of the register shall be able to determine; and if any party, afore or after sentence given, shall appeal from the said court, and shall put in caution to pursue his said appeal at

the next county court or court of admiralty, (after notice thereof given unto him,) and to pay treble damages to the defendant in the said appeal, in case the sentence given in the said hundred court be again affirmed, execution upon the judgment, so appealed from, shall be respited till certificate received from the county or admiralty court, that the said sentence is affirmed; and forthwith upon such appeal the register of the said hundred court shall deliver unto the defendant in the said appeal the record of the trial or judgment in the hundred court, and the same proofs and no more or other than were produced by the appellant in the hundred court shall be produced at the county court, except the court shall think fit to admit of other proofs; and to this end and for the further ease of the inhabitants of the said island, be it hereby provided, that once at least in every year, yearly in the month of October or November, (and at any other time when it may be with the convenience of the lieutenant general and secretary,) at or upon the desire or demand of the inhabitants of the said island or of the greater part of them credibly signified by letter, message or otherwise to the lieutenant general, the said lieutenant general and secretary and such of the council as may be obtained to accompany them shall or may repair to the said island and there hold a county court or court of admiralty, chancery, or pretorial for the full and final dispatching of all matters and causes whatever, wherein any of the inhabitants of the said island shall have use or need of the said courts or any of them; to which purpose the said lieutenant general and secretary so repairing to the said island afore, and such of the council as shall be present in the said island, and the commander of the said island or otherwise the said lieutenant general, secretary, and commander shall be all or any of the said courts within the said island to all the same intents and purposes and with all the same power and jurisdiction as any of the said courts is, hath or may or ought to be or have by the law of this province; Provided that, towards the recompensing and defraying the necessary pains and charges of such repairing to the said island for holding the said courts, every house-keeper of the said island shall contribute to the expense of the said voyage for every such time as the said lieutenant general and secretary shall repair to the said island at the request and desire of the inhabitants as aforesaid."

Taken from *Liber C & WH*, (a record-book in the office of the Court of Appeals,) p. 22.

NOTE (XXXII.) p. 141.

The *forms* of oaths prescribed by the bill, entitled, "an act for the several oaths to be taken by judges and public officers;"—from *Liber C & WH*, p. 6; a record-book in the office of the present *Court of Appeals*.

The oath of the lieutenant general.

"I, A. B. do swear, that, whilst I am a member of this province, I will bear true faith unto the right honorable Cecilius, lord of this province, and his heirs, (saving my allegiance to the crown of England;) and the said province, and him and them, and his and their due rights and jurisdictions, and all and every of them, will aid, defend, and maintain to the uttermost of my power; the peace and welfare of the people I will ever procure as far as I may; to none will I delay or deny right, but equal justice will administer in all things to my best skill according to the laws of this province; So help me God."

The oath of a Judge.

"I, A. B. do swear, that (whilst I am a member of this province,) I will bear true faith to the right honorable Cecilius lord of this province, and his heirs (saving my allegiance to the crown of England;) and his and their due rights and jurisdictions, and every of them, will defend and maintain to my power. To none will I delay or deny right. Reward of none will I take for doing of

justice : But equal justice will administer in all things to my best skill (without fear, favour, or malice of any person,) according to the laws of this province. So help me God."

The oath of a Councillor.

"I, A. B. do swear, that whilst I am a councillor of this province, I will true faith bear to the right honorable Cecilius lord of this province and his heirs, (saving my allegiance to the crown of England;) and him and them and his and their due rights and jurisdictions and every of them will defend and maintain to my power; the peace and welfare of the people I will ever procure as far as I may; I will aid and assist the administering and execution of justice in all things to my power; I will to my best skill give good and faithful counsel to the said Cecilius and his heirs and to his or their lieutenant general of the province for the time being, when thereunto I shall be called; and I will keep secret all such matters as are delivered me as secrets, as becomes a councillor to do. So help me God."

The oath of the *secretary* of the province, *clerk* of the chancery, and the *register* of every other court of record, "before he execute any act of his said office."

I, A. B. do swear that (whilst I am a member of this province,) I will true faith bear to the right honourable Cecilius, lord of this province, and his heirs, (saving my allegiance to the crown of England,) and his and their due rights and jurisdictions and every of them will defend and maintain to my power; to none will I delay or deny right in what belongeth to my office to do by the laws of this province; true record will I keep of judgments and all other matters to be by me recorded without falsification or corruption for fear, favour, or malice of any person. So help me God."

"To which end and purpose be it further enacted, that the *secretary of state* of this province, for the time being, shall have full power to administer to the lieutenant general the oath above mentioned, to be taken by the said lieutenant general, and that the lieutenant general, by the authority aforesaid, shall have full power to administer to every councillor of state, judge, and officer aforesaid, the oath above mentioned, to be taken by every of them in manner as aforesaid, according to the true intention of this present act. This act to continue to the end of the next general assembly."

N. B. Although the preceding bill, as well as all or most of the other bills of this session, was limited to continue only "to the end of the next general assembly;" yet, from the entry, stated in the text, relative to James Neal, this bill or act, prescribing the oaths above stated, was deemed to be in force and was therein acted under, in April, 1643, although two or three sessions of assembly had then intervened.

NOTE (XXXIII.) p. 145.

"An act for military discipline." (1638-9, No. 31.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and assent of the freemen of the same, that every housekeeper or housekeepers within this province shall have ready continually upon all occasions within his, her, or their house, for him and themselves, and for every person within his, her, or their house, able to bear arms, one serviceable fixed gunne of bastard muskett boare, one pair of bandeloors or shott bag, one pound of good powder, foure pound of pistol or muskett shott, and sufficient quantity of match for matchlocks, and of flints for fire-lock, and before Christmas next shall also find a sword and belt for every such person as aforesaid.

And it shall be for the captain of St. Marie's band or the commander of the isle of Kent, their or either of their serjeants or marshall once in every month to demand at every dwelling house within their several districts a sight or view of

the said armes and ammunition, and to certifie the defaults therein to the captain or commander, who shall thereupon amerce such partie or parties so deficient, in such paine as the defect shall deserve in his discretion, so it exceed not thirty pound of tobacco for one default, and all amerciements so imposed shall be paid to the said serjeant or marshall, to his or their own use.

And the said captain or commander shall forthwith furnish and supply the partie or parties deficient, with all such necessary armes and ammunition as afore appointed, and shall impose any price upon the same not extending to above double the value of the said armes and ammunition according to the rate then usual in the country.

And upon any alarm every householder of every hundred, having in his family three men or more able to beare armes, shall send one man completely armed for every such three men, and two men for every five, and so proportionably, to such place as shall be appointed or notified by the commander or high constable or other officer of the hundred, and the householders within St. Marie's hundred shall send their men as afore to the chappell yard neere the fort, except any other place be appointed by the lieutenant generall or the captain for the time being. And every householder delaying to send such man or men, according to the order aforesaid, for longer time than the man or men might conveniently have been sent, shall be fined in the pretoriall court according to the nature of the offence or contempt. This act to continue till the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 55.

NOTE (XXXIV.) p. 149.

"An act for measures and weights." (1638-9, No. 34.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, that within one month after the end of this assembly there shall be one standard measure throughout the province, as shall be appointed by the lieutenant generall, and after the said month no man shall sell by any other measure than what is sealed by the lieutenant generall or some person appointed by him to that purpose, according to the measures of the said standard. And no more shall be paid than three pounds of tobacco for the sealing of one measure.

And all contracts made for payment in corn shall be understood of corn shelled; and a barrel of corn tendered in payment at or afore the fifteenth day of October in any year, shall be twice shaken in the barrel, and afterwards heaped as long as it will lie on, and at or before the feast of the nativity, shall be twice shaken and filled to the edge of the barrel, or else not shaken and heaped as before, and after the said feast it shall not be shaken at all, but delivered by strike.

And within three months after this assembly is ended, no man shall sell or receive any tobacco or other goods by any steeleyards or other weight not sealed by the lieutenant general or persons appointed by him as afore (after such person with such seal shall be appointed) except it be small, sealed in England. And no more shall be demanded for the sealing of a pair of steeleyards or other grosse weight than the fee afore appointed for the sealing of a measure. This act to continue till the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 58.

(NOTE (XXXV.) p. 157.

"An act for the building of the towne house." (1638-9, No. 28.)

"Be it enacted by the lord proprietarie of this province, by and with the advice and approbation of the freemen of the same, that at such time and place as the lieutenant generall and counsell shall think fit there shall be a towne house built in such manner as the said lieutenant generall and counsell shall think fit.

And every housekeeper inhabiting within the province shall be contributory to the said building either in stuff, workmanship, labour, or tobaccos, in such manner and after such rates proportionally to each man's personal estate, (to be valued by the said lieutenant general and councill,) as the said lieutenant general and councill shall assess or impose. Provided, that the whole charge thereof amount not to above six thousand weight of tobacco in the whole province, and that no man (artificers excepted) be pressed to labour at the said building before November or after February in any yeare; And provided, that artificers and labourers have such rates for their work as are reasonably used within the colony." Taken from Lib. C. and WH., p. 53.

NOTE (XXXVI.) p. 158.

"An act for the descending of land." (1638-9, No. 16.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, That a widow immediately after the death of her husband, (if she have no jointure,) shall be admitted tenant during her life to one-third part of all the land whereof her husband was seised any time during the coverture, (except in cases where she hath acknowledged a fine or joined with her husband in making of leases;) And she shall tarry in the chief house of her husband during her widowhood. And where any person dieth seised of any land, the guardian of the heir appointed upon the will, (if the heir be within the age of eighteen years,) may enter upon the land and shall be accountable for the reasonable profits thereof to the heir when he comes of age.

And where any person dieth seised of any land without disposing thereof by will, the next heir of such person, to whom the land ought to descend by the most general custom or common law of England, shall or may enter upon all the land whereof his ancestor died seised, and if such next heir be not living or residing within the province the nearest heir living within the province and claiming the same may enter upon the land, and hold it without waste or impeachment, until such next heir or nearer heir make claime.

And if such next or nearer heir make not clayme within ten years after the death of the ancestor, such nearest heir living within the province shall be admitted tenant.

And if there be no guardian or heir living within the province to hold the land as aforesaid the lord proprietarie shall or may enter upon the land, (if it be immediately held from the lord proprietarie,) or otherwise the lord of whom the land is holden, and hold the same until some heir to the partie deceased make clayme and then he shall be accomptable to the heir as a guardian ought to be, and if no claim be made within three years then he shall hold it without account to his own use, and if no clayme be made within ten years from such death of the ancestor, the land shall escheat to the lord of the fee. And where any next heir or nearest heir living within the province is within the age of eighteen years, and no will of the ancestor hath appointed him a guardian, the judge of the county court wherein the land lieth shall appoint a guardian or curator to the heir's person and land, either the mother of the heir, (if she be a widow and living within the province,) or otherwise the nearest of kinne to the heir living within the province to whom the land is not immediately to descend, or if there be no such mother or kindred residing within the province, then such person or persons as the said judge shall think fit, who shall hold the land without waste or impeachment,* and shall be accomptable to the heir when he cometh to

*This expression, as the reader will have observed, has occurred in a few lines back in this same bill. It is, in both instances, so in the record, and most probably was so in the original draught of it; a small technical error in the draughtsman of the bill. It should have been, "without impeachment of waste;"—*absque impetitione vasti*.

live within the province, or to the age of eighteen years for the reasonable profits thereof with such allowance for his pains as the judge receiving the account shall think fit,—Provided, That no escheat of any land by virtue of this act be to the lord proprietarie, until all lawful demands upon the land be satisfied to creditors recovering; and any creditors of the deceased making such proof in court of his demand as shall satisfy the court of the truth and justness thereof; and alledging that there is not sufficient distress of goods, may be admitted to enter upon the land, until the debt be satisfied according to the value of the land held as it shall be appraised before the sheriff by two indifferent neighbours upon oath. This act to continue till the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 29.

NOTE (XXXVII.) p. 158.

"An act for assuring of titles to lands." (1638-9, No. 17.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, that the register of every court shall keep a book of record, in which he shall enter all grants, conveyances, titles, and successions to land whatsoever, at the request of any one desiring the same to be entered; And the commander of any hundred may likewise keep a book of record, in which he shall or may enter all grants, titles, and successions to any freehold within the hundred, at the request of any one desiring it. And the partie or parties making such request shall set forth the special matter or title by which he claimes; and if the partie claim by law only, as the widow for her dower, the heire for his inheritance, the lord of the fee for his escheat, or the tenant by courtesy of Maryland for his wife's inheritance, the partie claiming shall averre or make such prooffe as the court shall think fit, that he or she is the widow, husband, or heir of the last tenant upon record, or that he or she is lord of the fee, and that the last tenant upon record died without heir. And if the partie clayme by matter of record, grant, deed, or legacie, the partie clayming shall alledge the matter of record, or exhibit the grant, deed, or testament by which he claims, upon which clayme so entered the partie clayming may enter upon the land so claymed, if no other be possessed thereof.

And at the next county court, or otherwise at the next hundred court, (if the land claymed be a freehold only,) the register of the said county or hundred court shall proclaime and publish the said claime of the partie, and such proclamation shall be continued and renewed in open court once at least in every year for three years together, and if within that space no matter be alledged by any person to the contrary, the partie clayming shall be entered tenant upon record to the land so claimed, and such entry upon record shall be a barre for ever to all other persons whatsoever from claiming the said land, other than such as shall claime by from or under the partie so admitted upon record. Provided, that the nearest heir living within the province and claiming or entring upon any land shall not be admitted tenant upon record till after ten years, according to the statute in that behalf provided, entitled, an act for the descending of land, and that the lord proprietary nor lord of the fee shall not be admitted by escheat for want of heirs living within the province until after ten years, likewise according to the statute aforesaid, any thing in this act to the contrary notwithstanding. This act to continue to the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 32.

NOTE (XXXVIII.) p. 160.

"An act for limiting the time of servants." (1638-9, No. 35.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, That all persons being christians,

(slaves excepted,) of the age of eighteen years or above, and brought into this province at the charge and adventure of some other person, shall serve such person at whose charge and adventure they were so transported for the full term of four years only, to commence from his or their arrival in the province, (except any other time were contracted for by covenant.) And the charge shall be accepted and adjudged [to] that person by whom or whose order the passage money was paid to the master or merchant.

And all persons under the age of eighteen years transported into this province at the charge and adventure of some other person, shall serve such person at whose charge he or they were so transported, until such person or persons so transported shall be of the full age of four and twenty years, (except likewise any other time were contracted for by covenant.)

And every maid servant being christian, (except as before excepted,) of the age of twelve years old or under, shall be bound to serve the partie or parties, transporting her or them, for seven years; and if she be above the age of twelve years, she shall serve for four years only, (except it were otherwise conditioned by covenant,) and at the end of any of the said termes of service expired, the master or mistress of such servant, (at the time when the said term is expired,) shall give unto such man or maid servant such conditions as were covenanted by the indentures or first covenants, or (in default of such covenant,) shall give unto them three barrels of corn, a hilling hoe, and a weeding hoe, and a felling axe; and to a man servant one new cloth suite, one new shirt, one pair of new shoes, one pair of new stockings, and a new Monmouth capp; and to a maid servant, one new pettycoat and waistcoat, one new smock, one pair of new shoes, one pair of new stockings, and the cloaths formerly belonging to the servant. This act to continue till the end of the next general assembly." Taken from *Liber C. and WH.*, p. 59.

NOTE (XXXIX.) p. 166.

Prior to the commission appointing Mr. Giles Brent commander of the isle of Kent, it may be proper to state, that soon after the passage of the act of 1638-9, ch. 2, sect. 8, and the bill entitled, "an act for military discipline," recited in the preceding chapter, a commission issued to the same gentleman appointing him "captain of the military band," for the purpose, as it would appear, of carrying into effect, these legislative proceedings relative to the militia. As Mr. Brent was a man of the first rank in the province during his time, these commissions to him seem to assume the importance of state papers, the exhibition of which it would be improper to omit, especially as they illustrate the military proceedings of the province at this period of time.

Commission to Mr. Giles Brent, appointing him "captain of the military band."

"Cecilius, &c., to our dear and faithful councillor Giles Brent, esqr., of St. Mary's in our province of Maryland, greeting. Whereas the military band of our colony of St. Mary's is now destitute of a captain to lead and command them and to exercise them in the military discipline, we, much relying upon your diligence, skill, and knowledge, have thought fit to commend unto yourself that care and charge, and therefore we do hereby constitute and ordain and appoint you to be captain of the said military band next under our lieutenant general, and to be henceforth called and esteemed, authorizing and withal requiring you according to the trust and charge belonging to that place to train and instruct all the inhabitants of our said colony able to bear arms, (those of our council excepted,) in the art and discipline of war on holydays and at any other time when there shall be need, and by yourself or your serjeant or other officer, once in every month if you shall find it needful, to view at every dwell-

ing house within the said colony the provision of necessary arms and ammunition, and where you find any defect to amerce the party failing at your discretion, so that it exceed not 30 lb. tobacco for one default, and further to punish any delinquent in any kind offending against the discipline military, and with the consent or direction of our lieutenant general to use, appoint, and command all power and means necessary or conducing in your discretion to the safety or defence of the province in as ample manner and with as ample and full power to all intents and purposes as any captain or commander useth or of right may or ought to use by virtue of his office of captain. Witness our dear brother Leonard Calvert, esqr.—Given at St. Mary's this 29th of May, 1639."

From "Council Proceedings from 1636 to 1657," p. 38.

Commission to Mr. Giles Brent, appointing him "commander of the isle of Kent."

"Cecilius, &c. to all persons, &c., know ye, that we, reposing especial trust and confidence in the fidelity and wisdom of captain Giles Brent, esqr., one of the council of our said province, have constituted and appointed, and by these presents do constitute and appoint the said Giles Brent to be commander of our isle of Kent within our said province, to rule and govern the inhabitants and all other persons for the time being or which shall be within our said island according to the powers hereafter committed to him, that is to say, in all matters of warfare by sea and land necessary to the training of soldiers and levying of them upon all occasions to the resisting of the enemy or suppressing of mutinies and exercising of martial discipline within or about the said island, to do all such things as to a captain do belong by the law of war, and in all causes civil wherein right or damages is demanded by or of any inhabitant of that island to cause right and justice to be done according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like causes as near as he shall be able to judge, and to try all the said causes, and to use, command, and appoint all power and means necessary or conducing to the doing of right and justice as aforesaid, and in all causes criminal prosecuted for correction, not extending by the laws of England to the taking away of life or member, to try and censure all the aforesaid offences and offenders in any punishment as he shall think the offence to deserve and to elect and appoint all necessary officers for the execution of the power hereby committed unto him, and to use exercise and execute all or any other power or powers for the conservation of the peace within that island as may be exercised by any justice of peace in England by virtue of his commission or the law of England, and for the better assistance of the said Giles Brent in the execution of the premises we have appointed our beloved friends William Brainthwayte, gent., captain John Boteler, and Thomas Adams gent., inhabitants of the said island to be aiding and assisting to him both in their council and otherwise to the uttermost of their skill and power to which end we likewise require the said Giles Brent to consult and advise with them on all occasions of importance. Given at St. Mary's, 3d of February, 1639. Witness our dear brother, &c."

From "Council Proceedings from 1636 to 1657," p. 43.

NOTE (XL.) p. 176.

"An act touching tobaccos."

(As it is abridged in Bacon's Collection of the Laws, 1640, ch. x.)

"By this ancient inspection law, made within eight years from the first settlement of the colony (so early a regulation of the staple being found necessary) it was enacted. (1.) No tobacco to be exported, till sealed by a sworn viewer, on pain of treble forfeiture. (2.) The commander of every county to appoint and swear three viewers in every hundred. (3.) Any person might demand a

viewer to view any tobacco wherein he might have interest, paying the fee. (4.) If any exception was taken at the viewer's judgment, the owner of the tobacco was to name one, the creditor or viewer another, and (if they dissented) the commander to name a third, which two or three should determine the question. (5.) Bad tobaccos were to be judged, ground leaves, second crop leaves, notably bruised or worm eaten, or leaves house burnt, frost bitten, weather beaten in the house, sooty, wet, or in too high case, so that the viewer, upon his conscience, might reasonably think, that it was not likely to last sound till midsummer following. (6.) Where a hogshead was found bad for the greater part, it was to be burned; where, for the less part, the owner was to forfeit four fold the quantity of the bad (so as it exceeded not the quantity in the case or chest) one half to the viewer, the other half to the lord proprietary. (7.) The viewer to have, for viewing, two pounds of tobacco per hogshead; for receiving, four pounds; and for burning, ten pounds of tobacco per hogshead. (8.) All cases and offences against this act, to be determined, &c., by the lieutenant general and council, or by the commander and assistants of any county, &c."

See also the record book in the office of the present court of appeals, entitled *Liber C. & WH.* p. 70.

NOTE (XLI.) p. 185.

The following document, relative to an election in England, illustrates that stated in the text. [Taken from the Annual Register, from the year 1769, p. 152.]

"To our much honoured and worthie friend, J. H. esqr., at his house at Kelston near Bathe.

"WORTHIE SIR,—Out of the long experience we have had of your approved worth and sincerity, our citie of Bathe have determined and settled their resolutions to elect you for Burgess of the house of commons, in this present parliament, for our said citie, and do hope you will *accept the trouble thereof*; which if you do, our desires is, you will not fail to be with us at Bathe, on Monday next, the eighth of this instant, by eight of the clock in the morning, at the furthest, for then we proceed to our election. And of our determination we intreat you to certifie us by a word or two in writing, and send it by the bearer to your assured loving friends,

JOHN BIGG, the Major,
WILLIAM CHAPMAN."

Bathe, Dec. 6, 1645.

NOTE (XLII.) p. 186.

"*An act for measures.*" (1641, ch. 2.)

"Whereas the want of a sett and appointed measure whereby corne and other graine might be bought and sold within this province doth daily breed inconveniences in passing thereof from man to man amongst the inhabitants thereof; Be it enacted by the lord proprietarie of this province by and with the assent and approbation of the freemen of this province, that from henceforth the measure used in England called the Winchester bushel be only used as the rule to measure all things which are sold by the bushel or barrel and all under proportions of dry measures to the bushel. The barrel to contain five of the said bushell and no more or lesse; And that within forty days next after the proclamation of this act in every county the sheriff shall procure a good bushell to be made and syzed as above, and shall have a seal whereby he shall seal that and all other measures by, which bushell and seal the sheriff shall have always in his custody as a rule whereby others shall be syzed and sealed which are to be used in buying and selling within the province and at the expiration of his office shall deliver the said measure and seal to his successor to be kept as aforesaid.

And every partie convict to have sold by any bushell or lesse or greater measure unsealed or differing from the foresaid after the feast of all saints next shall pay treble damages to the parties grieved and a fine of one barrell of corne to the lord proprietarie. Provided likewise that for every bushell so syzed and sealed by that in the sheriff's keeping, the sheriff for his fee shall have from the parties whose bushell is, four pounds of tobacco. This law to continue for two years next after the day of this session."

Taken from *Lib. C. & WH.* p. 72.

NOTE (XLIII.) p. 205.

"Conditions propounded by the right honorable Cecilius Lord Baltimore, lord proprietor of the province of Maryland in the parts of America to such persons as shall adventure or go to plant in the province aforesaid, which conditions are to begin from the feast of the Annunciation of the Virgin Mary, 1642, and to continue until new or other conditions of plantation for the said province, shall be published under his lordship's hand and seal within the said province.

Imprimis. What person soever being of British or Irish descent that shall be at the charge to transport into the province of Maryland, himself or his deputy, with any number of able men, between the ages of sixteen and fifty years of age, of the descent aforesaid and furnished with arms and ammunition according to a particular hereunder exprest, or any number of women between the ages of fourteen and forty-three, shall be granted unto every such adventurer, for every twenty persons he shall so transport thither, in one year, a proportion of good land, within the said province, containing, in quantity, two thousand acres of English measure which said land shall be erected into a manor and be conveyed by grant under the seal of our said province to him or her and his or her heirs forever in soccage tenure with all such royalties and privileges as are usually be-
longing to manors in England rendering and paying yearly unto his lordship and his heirs for every such manor a quiet-rent of forty shillings sterling per annum to be paid in the commodities of the country and such other services as shall be generally agreed for publick uses and the common good.

Item.—What person soever of the descent aforesaid shall at his or her own charge transport him or herself and any lesser number of persons men or women than twenty of the descent aforesaid and aged and provided as above said he or she shall have assigned to him or her and his or her heirs and assigns for ever for and in respect of him or herself and every such person as aforesaid fifty acres of land within the said province to be holden of some manor of his lordship's within the said province in free soccage paying therefor yearly a quiet-rent of twelve pence sterling per annum to his lordship and his heirs for every fifty acres in the commodities of the country as aforesaid.

Item.—Any person of the descent aforesaid that shall at his or her own charge transport thither any children of the descent aforesaid that is to say boys under the age of sixteen years and girls under the age of fourteen years shall have granted to them and their heirs for and in respect of every such child to be transported as aforesaid twenty-five acres of land within our said province to be holden of some manor of his lordship's within the said province as aforesaid under the yearly rent of sixpence sterling for every twenty-five acres to be paid as aforesaid.

Item.—Every person whatever that shall claim any proportion of land in the said province of Maryland by virtue of the conditions aforesaid, shall pass a grant of the said land so due to him, her, or them as aforesaid, under the seal of the province aforesaid within one year next after the said lands shall be due unto them and assigned and set forth in some part of the said province by his lord-

ship's lieutenant general there or in default thereof they shall by virtue of these conditions lose their rights unto the said lands for ever.

A particular of such arms and ammunition as are intended and required by the conditions above said, to be provided and carried into the said province of Maryland for every man between the ages of sixteen and fifty years which shall be transported thither.

Imprimis.—One musket or bastard-musket with a snap-hance lock.

Item.—Ten pound of powder.

Item.—Fourty pound of lead bullets, pistoll and goose shot, each sort some.

Item.—One sword and belt.

Item.—One bandelier and flask.

Dated at London tenth day of November, 1641.

C. BALTIMORE."

[Taken from "Council Proceedings from 1636 to 1657," p. 81.]

NOTE (XLIV.) p. 205.

It may not, perhaps, be useless to every reader to observe, that a degree of latitude does not consist of a single mathematical point, but, according to the best English computations, extends in breadth on any given meridian, from south to north, sixty nine miles and a half. Although French and other European astronomers have slightly varied from this computation, ascertained as early as the year 1635, by Mr. Norwood, an Englishman, who then measured a degree on the surface of the earth between London and York, yet the learned surveyors and astronomers—Messrs. *Mason* and *Dixon*, in the year 1764, when they commenced the running and settling the division-lines and boundaries between Maryland and Pennsylvania and the three lower counties, as they now stand, assumed *Norwood's* measurement of a degree of latitude, as a datum upon which they founded their observations and calculations, as appears from their journal now before me. They then ascertained also, (as stated in their journal,) that "the latitude of the south point of the city of Philadelphia, is 39° 56' 29" 1 north." Supposing then, that the northern limits of Maryland extended to "where New England is terminated," (as expressed in lord Baltimore's charter,) and the charter of New England, (of November 3d, 1620,) commenced the south bounds of New England "from the fortieth degree," which is *exclusive*, it necessarily followed, that the whole of the fortieth degree to the commencement of the forty-first, "where New England was terminated," was within the limits of Maryland. The Marylanders, then, might have, with perfect propriety, seated themselves not only on the Schuylkill, south of the forty-first degree, as they were now doing, but to the same extent on the Delaware, and taken possession of the spot where Philadelphia now stands.

NOTE (XLV.) p. 206.

Smith, in his History of New York, (from whom, what is here stated in the text is taken,) has not given us a copy of the *instructions* to Alpendam, which he mentions, from whence we might have received *Kieft's* ideas of the *right* of the Dutch "to the soil and trade" on the south river. His successor, in the government of New Netherlands, Peter Stuyvesant has, however, in his negotiation with the governor and council of Maryland, in the year 1659, entered very fully into a discussion of their *right*. It would be improper, at this period of our history, to anticipate this negotiation by any long quotation from the record thereof, except in merely stating, that, besides his fanciful suggestions, that the Dutch derived their right to New Netherlands by reason of Columbus's first discovery of America, they being then subjects of Spain, (this, perhaps, as a sett-off against the English right of discovery under Cabot,) and that king James,

when he divided Virginia into north and south, purposely left a space between these divisions for the Dutch, (although that division was in 1606, and Hudson's voyage in 1609,) he more particularly states, in his letter to the governor of Maryland, that "their undoubted right can be shewed by patten of the high and mighty lords states general granted to the noble lords overseers of the West India company,—further, by bargain and sale and deeds of the natives,—and possession above these forty years." This, by calculation back, would bring the time of their first possession to the year 1619. But this same Stuyvesant, some years afterwards, in his letter to Richard Nicolls, in 1664, when he surrendered up his province, mentions, that they had *then* enjoyed "the South river *forty* years." So little accuracy was there in this governor's statements! In this last mentioned letter also, he acknowledges, that the Dutch had no patent for the lands on South river until the year 1656. More credit, however, is to be attached to another part of Stuyvesant's statement in his before mentioned negotiation with the governor of Maryland, and which seems to explain what Kieft meant by saying, that the Dutch possession of South river was "sealed with their blood." "And as for the South river or as it is called by the English Delaware in the particular: The said river was in the primitive tyme likewise possessed, and a collony planted in the western shore within the mouth of the south cape called the Hoore Kill to this day. The Dutch nation erecting there and all over the country their states' armes and a little fforte, but after some tyme they were *all slained and murdered by the Indians*. Soe that the possessions and propriety of this river at the first in his infancy is *sealed up with the blood of a great many sowles*. After this in the yeare 1623 the fforte Nassaw was built about 15 leagues up the river on the eastern shore," (according to *Proud*, Hist. of Pennsylvania, vol. I, p. 110,—near *Gloucester* in New Jersey,) "besides many other places of the Dutch, and the Dutch Swedes to and againe, untill it thought the governor generall and counsell good to remove the said fforte Nassaw in the year 1650 downwards to the western shore againe, and there to fix a town as it is to this day;"—at the same place as that now called *New Castle*.—(See the above mentioned negotiation at large in the record book in the council chamber, Annapolis, entitled, "Council, HH, 1656 to 1668," p. 43.) From all which a short historical summary of the colonization of the Dutch and Swedes on South river, may be thus deduced to the year 1642.

That the Dutch had commenced a *trade* with the natives on the South river soon after their first permanent settlement on the North river in the year 1614, and for that purpose had occasionally fixed up small stockade forts, with, perhaps, small temporary habitations therein, at divers stations on the south river; but these traders being harassed by the Indians and "all slained and murdered," their successors in the trade were driven from the *west* side of the Delaware, and constrained to erect a fort on the *east* side thereof, near Gloucester, in New Jersey, in the year 1623, calling it fort Nassaw. This corresponds with what is stated in *Holmes's Annals*, (*sub anno*, 1623,) under the authority of governor Bradford, to wit, "that the Dutch had traded in those southern parts several years before he and the other English adventurers came to Plymouth," (which was in 1620,) "but that *they began no plantation there until after this time*." The Swedes, arriving in 1627, were more successful in preserving peace and friendship with the Indians; but do not appear to have fixed any permanent settlement on the south river, until the year 1631, when they built a fort, laid out a town, and fixed a settlement at the confluence of the Brandywine and Christina creeks, near Wilmington. In the year preceding that, (in 1630,) they had, it seems, some quarrel with the Dutch about the land or fort at Hoarkill, now Lewistown. In 1631 also, the Swedes built a fort on an island called *Tenecum*, in the river Delaware, sixteen miles above New Castle, which they called New Gottemburg;

here their governor, *John Printz*, had a fine settlement, which was named *Printz's Hall*; and on the same island the principal settlers are said also to have had plantations. The Swedes proceeded thus prosperously, but having in 1638 fixed a settlement or rather a factory for trade on the *eastern* bank of the Delaware at a place called by them *Elsinburgh*, near *Salem* in *New Jersey*, the Dutch could bear it no longer, and *Kieft*, their governor, wrote the remonstrating letter thereon to *Minuits*, as stated in the text. It appears, however, that *Minuits* was not the governor of the Swedish settlements on the south river, as is supposed by *Smith*, in his *History of New York*, (if it be true, as stated by *Proud*, in his *Hist. of Pennsylvania*—that *Printz* continued to be governor of the Swedes on the Delaware from his arrival till about the year 1654, when he returned home to Sweden,) but *Minuits* was only the principal factor of a trading company of Swedes, who had erected the fort at *Elsinburgh*. This supposition corresponds also with the statement of the anonymous Dutch author quoted by *Smith* in a note to this passage in his *History*. *Minuits*, however, continued his possession of *Elsinburgh*, and in this state the affairs of the Dutch and Swedes seem to have remained until the year 1642, the period of time of which we are now treating. The preceding summary will tend much to elucidate the subsequent fraudulent transactions, by which lord *Baltimore's* province became whittled down to the narrow limits of its present state.

NOTE (XLVI.) p. 220.

"An act determining what shall be judged a lawful tender.

It shall be judged a sufficient tender of tobacco in any debtor if he tender it at some place within the county where the debtor dwells, (except it be otherwise agreed) upon the day when it is due or otherwise if after the striking of it at any time before the 16th day of March he warn the creditor or his attorney in the county to come and receive it and after 20 days after such warning (or in case the creditor nor his attorney be in the county to be warned) then after 20 days after such striking in the presence of two or more credible freemen that may make oath of the soundness and weight of the tobacco he weigh and mark the tobacco to the use of the creditor after which time it shall remain as the proper goods of such creditor, and any party privy other than the creditor (or some other by his consent or appointment) using hearmaing or taking away such tobacco after such tendure made shall make fine and pay treble damages to the party grieved. This act to endure till the end of the next assembly."

Taken from "*Lib. C. & WH.*" p. 102; and noticed in *Bacon's Laws*, as "1642 ch. 30."

NOTE (XLVII.) p. 225.

"An act for the forms of proceedings in causes. [1642, ch. 10.]

Every judge and court authorized or allowed by the lord proprietor or the law of the province shall or may have and use all necessary and sufficient power for the administration of justice and doing or causing right to be done to all persons, and appointing the formes and means of it, and awarding all necessary processe to that end in such forme and unto such effects and under such reasonable penalties as the judge or court shall think fit, guiding themselves as near as conveniently they may to the former precedents and usages of the court, and in defect thereof to the formes of England in the same or the like cases, except where any thing is specially provided by the law of the province. This act to endure till the end of the next assembly."

Taken from "*Lib. C. & WH.*" p. 85.

NOTE (XLVIII.) p. 225.

"An act ordering some things touching the tryall and judging of causes." (1642, ch. 11.)

"The judge may administer an oath to either party in any civil cause for the

better investigation of the truth, and upon any one's refusal may proceed against him as if he had confessed the matter enquired of him by oath. The defendant in any cause civil or criminal may put himself for trial upon the judge or court, or upon his country, or may wage his law in cases allowable by the law of England; if both parties join in the tryall it shall be tried according to their agreement. If either party desire to be tried by the country, and put in security to pay the charge of the jury, the issue shall be tried by the oath of 12 freemen returned by the sheriff and thought fit by the judge to be admitted upon the exception of either party. And if the other party joined not in the trial by the country, he that caused the jury shall defray the charge of it, without putting it to costs; except that in criminals extending to losse of life or member the offender may demand to be tried by the jury, without putting in any security for the charge. The sheriff in awarning of juries shall observe a certain course and order of turnes among all the freemen of the county, (the counsell or commissioners only excepted,) to which end the writ for warning the jury shall not be returnable until 15 days at the least after the delivery of it to the sheriff. And the sheriff upon receiving any writ may award out precepts to any his under sheriff or bailiffe in any hundred or division to the effect of the writ, which precept shall be of force to all persons, and the return of such under sheriff or bailiffe may be returned by the sheriff. Wageing of law against an accompt book shall be admitted according to the sound discretion of the judge. Where any executor or administrator is party to the action, the judge may admit such proof as he shall think necessary and sufficient according to the case. This act to endure till the end of the next assembly."

£. Taken from "Lib. C. & WH." p. 85.

NOTE (XLIX.) p. 225.

A clause in the act of 1642, ch. 12, entitled "an act touching verdicts and judgments."

"If the judge think any verdict grievous to either party, or exceeding the issue committed to their inquiry, he may return them to consider better of it, or charge another jury with it, at the instance of either party desiring it and undertaking the charge. To which end the point in issue shall be delivered to the jury in writing underneath it, which shall be kept upon a file by the clerk of the court for the justification of his entry. And if the judge find the jury evidently partial or wilful, he may charge another jury to enquire and try by the same evidence. And, if they find contrary to the former jury, all the former jury may be fined at the discretion of the judge. This act to endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 86.

NOTE (L.) p. 226.

"An act touching succession to land." (1642, ch. 17.)

"Where any one dyeth seised of land in fee, not disposing of it otherwise by his last will, the next heir shall succeed as hath right by the law of England. In defect of such heir the nearest heir living within the province may enter upon the land and hold it for the use of such next heir. And if none nearer enter or clayme in 7 yeares he shall hold it in the same right and estate as if he had been next heir; And in defect of all such heirs living within the province the lord proprietarie may enter and hold the land in such manner as is afore appointed for nearest heire; And the widow shall succeed to the thirds of the lands and to the mansion house to hold it during her widowhood as her husband was seised of at any time during the coverture in such manner as she may by the law of England. To endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 95.

NOTE (LI.) p. 234.

The new commissions of 1642, for the government of the province.

THE GOVERNOR'S COMMISSION.

“Cecilius, lord and proprietor of the provinces and countries of Maryland and Avalon in the parts of America, lord baron of Baltimore, &c., to all and singular persons to whom these presents shall come, greeting,—Know ye that we, for divers special considerations us thereunto moving have revoked and determined, and by these presents do declare, that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to any other person whatsoever for or concerning the government of our said province of Maryland, and all power and authority by us thereby granted unto him or to any other of our council, or to any other person or persons whatsoever, in and by the said commissions or any of them, and we do hereby likewise discharge all and every person and persons whatsoever from our council, and to be of our council within the said province of Maryland, which heretofore have been of our council there.

Former commissions revoked.

Nevertheless considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established as well for the cherishing of the virtuous and orderly, as for the punishment of the lewd and disorderly persons there, and calling to mind the faithful and laudable services done by our said dear brother Leonard Calvert, esq., as well in the adventure of his person in the first discent and settling of our colony within our said province of Maryland, as in the ordering and advancing of the same by his personal residence within the same our said province, wherein he hath manifested to the satisfaction of ourself and of our colony there, such wisdom, fidelity, industry and other virtues, as render him capable and worthy of the trust hereby by us intended to be reposed in him, have nominated, constituted, ordained, authorised, established, and by these presents do nominate, constitute, ordain, authorise and establish, the said Leonard Calvert in the absence of us and our heirs, our lieutenant general, admiral chief captain, and commander, as well by sea as by land, of our said province of Maryland and the islands to the same belonging, and we do by these presents grant unto him the chief commandment and absolute authority above and in all matters of warfare by sea and land, to execute and administer the same to the resistance of the enemies or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious for the preservation of our said province, and to do all such things as do belong or appertain to the office of a general, admiral, chief captain and commander, in as large and ample manner to all intents and purposes as we ourself might do, if we were personally present by force or virtue of the letters patent to us granted by our sovereign lord, king Charles, under the great seal of England, bearing date at Westminster, the 20th day of June, in the 8th year of his majesty's reign, to have, hold, execute and administer the same with such and as ample power and authority, as if we were personally present, might do or execute the same by force or virtue of the letters patent aforesaid, until we shall signify our pleasure to the contrary.

Leonard Calvert to be lieutenant general, &c. &c.

And we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland, all captains, officers and soldiers, as well by sea as by land, whom it doth or may concern, all our officers, receivers, bailiffs, marshalls, and all other inhabitants of our said province of Maryland, of what quality and condition soever, that they and every of them do acknowledge the said Leonard Calvert in the quality of lieutenant general, admiral, chief captain and commander, over all our foresaid province of Maryland and the islands and members of the same, and do honour, respect and obey him as they ought to do, upon pain of such punishment to be inflicted upon

This commission to be proclaimed within the province.

them and every of them, as such a high contempt as the disobedience and neglect thereof shall deserve, and to the end that no man shall pretend ignorance, we do command this our commission and ordinance to be proclaimed and published within our said province, at the places accustomed to proclaim and publish any our edicts and ordinances commanding him our said lieutenant to proceed with rigour against all contemnners and neglecters of the same in such strict and severe manner as we ourself might do by force and virtue of the said letters patent, if we were there personally present, and that without favour and connivance.

Leonard Calvert to be chancellor, chief justice, &c.

And we do further by these presents make, constitute, ordain and establish the said Leonard Calvert to be our chancellor, chief justice and chief magistrate within our said province, untill we or our heirs shall signify the contrary under our hand and seal; and we do hereby give him power, from time to time, to appoint and constitute officers and ministers, for the administration and execution of justice, and for doing and executing of all other things whatsoever, which belong to the establishing and government of a good and happy commonwealth within our said province.

Power to him to call assemblies.

And we do further by these presents grant unto him our said lieutenant, chancellor, chief justice, and chief magistrate, full and absolute power and authority, when and as often as he shall think fit to call and summon one or more general assembly or assemblies of the freemen of our said province, or their deputies, at such place or places within our said province, as he shall think fit, for the consulting, preparing and enacting of wholesome laws and ordinances, for the government and well ordering of the said province, and people within the same, to which purpose we do hereby grant full power and authority unto our said lieutenant general, chancellor, chief justice, and chief magistrate, from time to time, in every general assembly, to be summoned by him in the said province of

And to assent to laws.

Maryland, in our name, stead and place, to give assent and consent unto all such laws and ordinances as he our said lieutenant general, chancellor, chief justice, and chief magistrate shall think fit and necessary for the good government of our said province of Maryland, and which shall be consented unto and approved of by the freemen of our said province, or the major part of them, or their deputies, to be assembled by him the said lieutenant general, chancellor, chief justice, and chief magistrate, there from time to time, for the enacting of laws within that province, Provided that the said laws so to be assented unto by him, our said lieutenant general, chief justice, and chief magistrate there, in our name, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law so to be assented unto by him our said lieutenant general, chancellor, chief justice, and chief magistrate there in our name, and consented unto and approved of by the freemen or their deputies, or the major part of them as aforesaid, we do hereby declare, shall be in force within the said province, till we or our heirs shall signify our or their disassent thereunto, under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same under our or their hand and seal.

Power to the lieutenant general to adjourn, &c. assemblies.

And we do by these presents grant full power and authority unto our said lieutenant to adjourn, prorogue and dissolve all and every such assembly and assemblies, by him heretofore called, or hereafter to be called at his pleasure.

Power to him to publish edicts and proclamations.

And forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws, will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require a speedy remedy; we do therefore hereby grant unto him our said lieutenant, full power and authority, from time to time, to make, constitute, ordain and publish in our name, such reasonable and profitable edicts and

proclamations within our said province of Maryland, with reasonable pains and penalties therein to be expressed, to be duly inflicted on all offenders against the same as he our said lieutenant in his discretion shall think fit, and as by our letters patent above mentioned, is and are warranted, Provided, that such penalties do not extend to the taking away the rights or interests of any person or persons of or in their life, members, freehold, goods or chattels, nor be repugnant or contrary, but agreeable, as near as may be to the laws established within the realm of England, and to the laws and ordinances established, or to be established, within our said province of Maryland, all which edicts and proclamations shall stand in force only and untill we or our heirs shall signify the contrary, under our or their hand and seal to him our said lieutenant and the people there, or that he our said lieutenant shall, in his discretion, think fit to repeal the same, or that the same be repealed in a general assembly of the said freemen, or their deputies, to be called and assembled as aforesaid, with the consent of our said lieutenant.

Proviso,
strictly limit-
ing the extent
of such edicts

And further we do hereby grant full power and authority unto him our said lieutenant, to appoint from time to time, fit places for public ports for lading, shipping and unlading, and discharging of all goods and merchandizes, to be imported or exported out of our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish markets and fairs to be there held upon certain days, for that purpose to be by him appointed.

Power to him
to appoint
public ports,
fairs and
markets.

And we do further by these presents grant full power and authority unto him our said lieutenant, (if he see cause) to pardon and remit in part, or in the whole all pains, forfeitures or penalties, which any person or persons within our said province shall incur for any crime, misdemeanor, or offence against any the laws, ordinances, or orders whatsoever, made or to be made for the good government of our said province, and to grant pardons for all and every such delinquents in our name, under our great seal of our said province, so as such pardon or pardons extend not to the pardoning of high treason.

Power of
granting pardons
and of
remitting for-
feitures.

And further we do by these presents [grant full power and authority unto him our said lieutenant]* commit the custody and keeping of our great seal of our said province unto him our said lieutenant, And we do hereby grant unto him our said lieutenant, power and authority for us and in our name to pass and grant under our said great seal, all writs and processes, all commissions as well for authorising such person and persons to be of our council there, as we shall from time to time appoint by warrant or direction, under our hand and seal, as for the execution of justice, and for dividing and bounding of lands, all pardons, licenses, and all other public acts and deeds whatsoever, which shall at any time pass within our said province.

Lieutenant
general to be
keeper of the
great seal.

And we do further hereby grant full power and authority unto him our said lieutenant, for us and in our name to pass and grant, under our great seal, to such person and persons such proportion and quantities of land within our said province for such estate and interest, and with such privileges and immunities as have, since the 16th day of October, 1640, or from time to time shall give him our said lieutenant warrant from under our hand and seal, all which grants so to be made or passed, after the same grants and the said warrants under our hand and seal for the passing thereof, shall be enrolled by our secretary of the said province, for the time being, and not afore, we do hereby declare, shall be effec-

Power to him
to grant pat-
ents for lands.

*There is some error in the language here, but it is so in the record. The words which I have inclosed within brackets, appear to have been inserted through mistake by the person who entered it on the original record, or by him who copied it into the record book now existing. See the same clause in the subsequent commission of September 18th, 1641.

tual in law against us, and shall bind us and our heirs as firmly as if livery and seisin had been given and executed thereupon.

And to administer an oath to the councillors.

And because we hold it fit that some persons should be sworn of our council within our said province, for the better assistance of him our said lieutenant in the execution of the premises, and of the charge by us committed unto him, we do authorise and require our said lieutenant to administer the ordinary oath of a councillor to every such person and persons which shall hereafter be admitted of our council within our said province of Maryland, before such person and persons to be admitted of our said council with whom our said lieutenant shall from time to time advise, as he shall see cause upon all occasions concerning the good government of our said province of Maryland, and of the people there.

Lieutenant general to be sole judge of all causes criminal, (except where life, &c. are concerned,) and of all causes civil, (except in cases of free hold.)

And we do hereby grant full power and authority unto him our said lieutenant, to enquire, hear, determine, and finally to judge of and upon all causes criminal whatsoever, of what nature, kind, quality, degree or condition soever the same shall be, which may happen or arise within our said province of Maryland, as fully and absolutely as we ourself might do by force or virtue of the letters patent aforesaid, if we were personally present to give sentence or judgment of or in or upon the same (excepting only where the life or members of any person shall or may be inquired of or determined) and to award execution upon every such sentence or judgment, and also to hear and determine all civil causes, actions, suits and demands, both in law and equity, of or concerning any goods, chattels, contracts, debts, demands, or other personal or mixed action or actions, suit or suits whatsoever (excepting where the freehold of any person or persons shall come in question) in the most summary and equal way that he may, according to the orders, laws and statutes, of that our said province of Maryland, already made and established, or hereafter to be made and established, and in default of such laws established, or to be established within the said province of Maryland, then according to the laws and statutes of the realm of England, as near as he can or may judge or determine thereof.

Lieutenant general, with the council, judges of capital cases, and cases of freehold.

And where the life, member or freehold of any person or persons, shall happen to come in question within our said province of Maryland, we do hereby grant unto him our said lieutenant, and unto such persons as we shall from time to time, by commission under the great seal of our said province, nominate and appoint to be of our council within the said province of Maryland, or unto any three of them (whereof our said lieutenant to be always one) full power and authority to inquire, hear and determine thereof, according to the laws of our said province of Maryland, established or to be established; and in default of such laws there established, or to be established according to the laws of England, as near as they can judge thereof, and to award execution accordingly.

Power to the lieutenant general in case of his death or absence to appoint his successor.

And lastly, whereas the said lieutenant may happen to die or be absent for some time out of our said province of Maryland before we can have notice to depute any other in his place, we do therefore hereby grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint such an able person inhabiting and residing within our said province of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general, chancellor, admiral, chief captain, magistrate and commander as well by land as by sea of our said province of Maryland and of the islands to the same belonging and in as large and ample manner as we have by these presents authorised him our said lieutenant to govern for the present.

In case of his failure to do so, the council to appoint one of their own body thereto.

And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant general admiral chancellor and chief captain magistrate and commander of our said province of Maryland as well by sea as by land, we do hereby grant unto our councillors there for the time being or the

greater part of them full power and authority from time to time in every such case to nominate and elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant general, chancellor, admiral, chief captain, magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging which person so to be chosen and appointed in any of the cases aforesaid we do hereby declare shall be our lieutenant general chancellor admiral chief captain and commander of our said province of Maryland during the absence of our said brother or untill we or our heirs shall signify our pleasure to the contrary, to which lieutenant general, chancellor, admiral, chief captain, magistrate and commander so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother, hereby commanding our councillors, captains, soldiers, officers and ministers, for the time being, and the people of our said province of Maryland and all others whom it may concern to be obedient unto him in all things, matters and causes as we have in and by these presents commanded them to be obedient unto our said brother our present lieutenant general chancellor admiral chief magistrate captain and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve. Given under our great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fourth day of September Anno Dom. 1642.

The same 4th of September was the said commission published at the Fort of St. Mary's."

[Taken from "Council Proceedings from 1636 to 1657," p. 68 to p. 78.]

"Commission of the Council.

"Cecilius lord and proprietor of the provinces of Maryland and Avalon in the parts of America lord baron of Baltimore, &c. to our dear brother Leonard Calvert esq., our lieutenant general of our said province of Maryland and to our trusty and well beloved colonel Francis Trafford esqr., Thomas Cornwaleys esqr. John Lewger esqr. William Blount esqr. and John Langford esqr. greeting, know ye that we reposing especial trust and confidence in your wisdoms diligence and experience have assigned and appointed you jointly and every of you severally to be of our privy council within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times, until we shall determine or otherwise revoke this present commission, to assemble and meet together with our lieutenant general of our said province for the time being when and where he shall from time to time direct and appoint to treat consult deliberate and advise of all matters causes and things which shall be discovered unto you or be brought before you as well concerning the quiet government and regulating the people there as for the good and safety of our said province of Maryland and for the better and more peaceable government of our said province of Maryland we do hereby appoint and assign you and every of you (until we shall revoke or determine this present commission) to be our justice and justices commissioner and commissioners for conservation of the peace within our said province of Maryland and do hereby grant unto you and every of you (in case any breach of peace shall happen within your, or any, or either of your view, or in case you shall be informed of any breach of the peace full power and authority to arrest or call before you by your warrant to be directed to the sheriffs constables or other officers of counties towns villages and other places within our said province of Maryland all and every the offender and offenders against our peace and if you see cause to bind over the offender or offenders with a good surety or sureties to appear before our lieutenant

ant general and the council there to answer the same and in the mean time to keep the peace or be of the good behaviour as the case shall require and in default of such surety or sureties to be by such offender or offenders tendered unto you to commit the offender or offenders to the common gaol or next prison within the said province as to you shall seem fit there to remain until they shall find good surety or sureties as aforesaid or untill he or she or they shall be delivered by our lieutenant general or the council of our said province of Maryland or the greater part of them whereof our lieutenant general for the time being to be one.

And we do hereby further grant unto you and every of you full power and authority to attach and arrest or by your warrants to cause to be arrested and attached and to bring to due punishment all offender and offenders in weights and measures all forestallers of markets regrators ingrossers extortioners rioters and other offenders against the public welfare and peace of our said province of Maryland.

And we do hereby command all our sheriffs officers and ministers whatsoever that they and every of them be obedient unto you our said councillors and commissioners and every of you in all things as becometh. Given under the great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fifth day of September Anno Dom. 1642."

From "Council Proceedings from 1636 to 1657," p. 78.

"Commission of Secretary.

"Cecilius lord and proprietor of the provinces of Maryland and Avalon in the parts of America, lord baron of Baltimore, to all and singular persons to whom these presents shall come, greeting, know ye that we having had long experience of the abilities and industry of our trusty and well beloved councillor John Lewger, esqr. in performing unto us good and faithful service in our said province of Maryland and reposing especial trust in his wisdom diligence and experience have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said John Lewger to be our secretary of our said province of Maryland and also judge of all causes testamentary and matrimonial within our said province.

And we do by these presents appoint, constitute and ordain the said John Lewger as well to be our principal officer and keeper of the acts and proceedings of us and our lieutenant general and council there for the time being and of and for the entring and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland and for the entring and recording of all other matters acts and things which by any instructions laws or ordinances made or given or to be made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heirs or by the appointment of our lieutenant general or other chief governor there for the time being or otherwise to be entered as recorded, as also our collector and receiver of all our rents revenues and customs and of all amerciaments tolls profits and duties whatsoever already due or payable unto us within our said province to have and to hold execute and enjoy the said office and offices unto the said John Lewger during our pleasure.

And we do hereby promise and grant signify and declare that all and every acquittance or other discharge under the hand and seal of the said John Lewger shall be to all and every the people there within our said province a sufficient discharge for such rents customs profits and other duties which shall from time to time be paid unto him the said John Lewger for our use. Given under our great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fifth day of September 1642."

From "Council Proceedings from 1636 to 1657," p. 80.

NOTE (LII.) p. 263.

The lord proprietary's instructions to governor Brent.

"Whereas my dear brother Leonard Calvert, esqr., upon his departure out of the province of Maryland in April 1643, did by virtue of a commission from me dated 18th November, 1641, constitute Giles Brent, esqr., to be my lieutenant general of my province of Maryland during the absence of him the said Leonard Calvert out of the province or until I or my heirs should signify our pleasure to the contrary, these are to signify and declare that I do well approve of my said brother's act therein and in confidence of the fidelity and discretion of him the said Giles Brent I do hereby ratify and confirm the said Giles Brent to be my lieutenant general of the said province and to execute all other powers within the said province (except hereafter excepted) which were granted to my brother in the commission above mentioned during my said brother's absence out of the said province or until I or my heirs shall signify mine or their pleasure under mine or their hand and seal to the contrary, Provided nevertheless and I do hereby declare that I will not that the said Giles Brent shall assent in my name to any laws hereafter to be enacted in any general assembly to be held within the said province notwithstanding any thing contained in the commission above mentioned dated 18th November, 1641, or in any other commission whatsoever without further authority to be hereafter obtained for that purpose under mine or mine heir's hand and seal and in case any laws have been assented unto by him the said Giles Brent in my name in any general assembly which hath been held within the said province since my said brother's departure from thence, viz., since the first of April last, 1643, I do hereby declare my dissent to all and every such law or laws which have been assented unto or enacted within the said province in my name by the said Giles Brent, And because I intend by the grace of God to come in person myself into the said province at or before January next after the date hereof I thought fit also for divers reasons to suspend the granting of any more lands within that province till my arrival there when I shall take order to grant to every one their due who have any just right or claim from me of any lands within that province, and therefore I do hereby also restrain and revoke that power of granting any lands in my name by him the said Giles Brent under my great seal for the said province, and do hereby require him the said Giles Brent not to grant any accordingly without further order therein under mine or my heir's hand and seal any thing contained in the commission above mentioned dated 18th November 1641, or in any other commission whatsoever to the contrary in any wise notwithstanding, And whereas my said brother together with my secretary and surveyor general there did lately purchase (as I am informed) in my name and to my use the chapel of St. Mary's and the other buildings and land belonging thereunto, for the discharge of the price thereof my said brother together with my secretary and surveyor did (as I am informed) sign to three bills of exc. directed unto me all to one and the same effect for the payment of two hundred pounds sterling in England to captain Thomas Cornwaleys or his assigns (whose name it seems was thought fit to be used in that business although the said purchase was not made from him) the which bills by reason of some mistakes in that business I have thought fit not to accept, whereupon (as I understand) one or more of them are protested according to the usual manner in such cases, and whereas also (as I am informed) two other bills of exc. signed by the said captain Thomas Cornwaleys and directed to one Mr. Thomas Gerard and to Mr. Edward Harris or to one or both of them for the payment the one of thirty pounds sterling and the other of ten pounds sterling to my said brother, which bills are also (as I am informed) not accepted but protested also in the same manner as the other above mentioned, whereupon some directions may perhaps respectively be sent thither

"Published
23d Decem-
ber, 1643."

to recover a satisfaction of all the said bills to the respective pretenders thereunto with costs and damages, but because for divers reasons true and right justice cannot be done therein without some advice, and testimonies from hence which cannot yet be had, therefore I thought fit and do hereby restrain the power of the said Giles Brent or any other person by authority derived from him to grant process or take cognizance of any suit or complaint whatsoever concerning all or any of the aforesaid bills of exc. or to give or pronounce any judgment therein any thing contained within the above mentioned or any other commission to the contrary in any wise notwithstanding, but to suspend any proceeding therein till my arrival there when I shall not fail to do unto every person equal right and justice therein and do thereby hereby require the said Giles Brent and all others whom it may concern to obey any order herein as they will answer the contrary at their utmost perills, and I do hereby require the said Giles Brent and my secretary there or one of them to cause this my declaration with all convenient speed after their or either of their receipt hereof to be recorded and published at the usual places of publishing orders within the said province for the government there. Given under my hand and seal the fourteenth day of July, 1643.

C. BALTIMORE."

To Giles Brent, esqr., my lieutenant general of my province of Maryland and to my secretary and the rest of my council there and to every of them."

[Taken from "Council Proceedings from 1636 to 1637, p. 106.]

NOTE (LIII.) p. 269.

His lordship's commission "for his treasury in Maryland," and his instructions thereto annexed.

"*Locus* "Cecilius, &c., to all, &c., Know ye, that whereas heretofore I have made several authorities and directed one or more commissions to several persons in Maryland for the well ordering and disposal from time to time of my stock or stocks of neat and other cattle and of all other my goods and chattles there and also of all rents fines confiscations or escheats tributes or other gifts from the Indian customs or subsidies granted to me by any general assembly and all other profits and emoluments belonging to me within the said province of Maryland, and for the better managing clearing letting such farm or farms manor or manors or other lands set out and designed there for my particular use according to such directions and instructions as I should from time to time send thither for the purpose above mentioned, and whereas some of the aforesaid persons are since departed out of the said province whereby I may receive much prejudice in the neglect of that service, Wherefore I have thought fit out of the confidence I have of the integrity fidelity and good affection towards me of my trusty and well beloved Giles Brent, esqr., my lieutenant general of the said province of Maryland, John Lewger, esqr., my secretary, James Neal and Thomas Gerard esqr., all of my council there and William Brainthwayte, gent. to constitute and I do hereby constitute ordain and appoint them the said Giles Brent John Lewger James Neale Thomas Gerard and William Brainthwayte to be commissioners for my treasury within the said province, And I do hereby authorize them or any two of them (whereof the said Giles Brent to be always one) to take care of receive and dispose from time to time of all and every such things as are above mentioned belonging to me within the said province to my best advantage according to such directions and instructions as the said commissioners shall from time to time receive from me and in default thereof according to their best discretions and to appoint from time to time change alter or remove any such officers to receive my rents and other profits above mentioned there as also to look to my stock of neat cattle and for the better execution of all other the said premises and to allow such salary and wages

to be paid to them out of the profits above mentioned or sale yearly of some of my said neat cattle as they or any two of them (whereof the said Giles Brent to be always one) shall from time to time think fit and I do hereby ratify and confirm what the said commissioners or any two of them (whereof the said Giles Brent to be one) shall from time to time lawfully do in any of the premises as much as if I myself had been present and had done the same, willing and requiring the said commissioners and every of them that they or two of them at the least (whereof the said Giles Brent to be one) do send unto me a just and true account yearly of all such things above mentioned as are or shall from time to time become due unto me within the said province and of their proceedings in the same signed with their hands, and I do hereby revoke all former authorities and commissions which I have heretofore made or sent thither concerning the premises or any part thereof so far forth as they or any of them do concern the premises only or any part thereof and no further declaring, hereby that I shall not make good any contract or bargain for the future concerning any of the premises there but what shall be agreed unto by my said commissioners or two of them at least (whereof the said Giles Brent to be always one) which revocation I do require the said commissioners to notify unto the English inhabitants of the said province by causing this present writing to be published in the most usual places of publishing things of the like nature within the said province. In witness whereof I have hereunto set my hand and seal at arms at Bristol in the realm of England the 18th day of November *anno domi*. 1643.

C. BALTIMORE.

Instructions given by me Cecilius lord Baltimore to my commissioners for my treasury in Maryland dated the 18th day of November 1643.

1. Upon the receipt of these instructions I would have them cause a true inventory to be made as soon as conveniently may be of all my cattle which I would have from time to time marked duly with my mark and of all other goods and chattels whatsoever belonging to me within the said province of Maryland specifying therein in whose hands and in what places they are, and likewise a true rental of all such rents as are payable unto me there in both which I require my secretary there to direct them and that the commissioners cause true copies of the said inventories and rental to be sent (by the first opportunity) to me signed with two of their hands at least whereof the said Giles Brent to be one.

2. That they continue these goods of mine which were (by my directions) formerly put into Mr. Gilmett's custody still in his hands as long as he stays in Maryland or I give other directions concerning them but I would have the commissioners to demand and keep a note under Mr. Gilmett's hand of the particulars thereof as acknowledging them to be in his custody.

3. That all my carpenters and other apprentice servants there be sold forthwith for my best advantage which I understand will yield at least 2000 lb. tobacco a piece although they have but one year to serve especially if they be carpenters for I understand that 1500 lb. wt. of tobacco is an usual rate for the hire of one year's labour of any ordinary servant and I conceive it better to hire at a certainty such servant from year to year as my commissioners shall find necessary, to look to my cattle provide sufficient fodder for them and to manage my farm at West Saint Mary's and to pay their hire yearly out of such revenues and profits as shall become due to me there or in default thereof by the yearly sale of some of my stock there than to have servants apprentices there for that purpose and to send supplies yearly out of England to them.

4. That they allow unto Mr. Giles Brent yearly two steers out of my stock of neat cattle for his own expence in regard of his care of them and two steers yearly to Mr. Gilmett for his expence and two more together with 20 barrels of corn yearly (to be taken out of my quit rents there) and the use of six milch

kine to my secretary there for his care and pains in writing of the accompts yearly and in my other affairs there till I shall signify my pleasure to the contrary my said secretary being at the charge of keeping of the said six kine and of rearing the calves that come of them till they be weanable and then to deliver the said calves at my farm at West Saint Mary's to be put into my other stock of neat cattle, Provided always that the said secretary make such provision of fodder and housing for the said cows and calves in his custody for the winter as my said commissioners shall find necessary for them.

5. That they allow unto my lieutenant general Mr. Giles Brent for his pains and care in the government there the one half yearly of all fines, confiscations, wrecks, tribute from the Indians, customs or other gifts from the general assemblies there which shall grow due unto me during the time of his government under me there but I would have all such things as are mentioned in this article to be entirely charged upon their yearly accompts to me and the one half thereof discharged again upon the said accounts it being disposed of according to this my direction.

6. That they take care to cause such tobaccoes to be satisfied to my brother Leonard Calvert or his assigns as he or his assigns shall have disbursed or engaged themselves for my use there this last year which in case it cannot be otherwise I would have them done by sale of some of my neat cattle but I would have them know I do extremely desire to have my stock of neat cattle and sheep to be preserved as much as possibly may be and that they should not be any way diminished but when necessity doth absolutely require it and I would have the commissioners to be very careful that when there is a necessity of selling of any of my neat cattle it may be done with the least prejudice that possibly may be to the increase and good of my said stock for in so doing they will do me a very acceptable service which I shall acknowledge to them in due time.

7. That they use their best endeavours to discharge the bargain which was made this year for Mr. Copley's house at St. Mary's by letting him have his house and land there again and a reasonable consideration allowed unto him for Mr. Gilmett's time of being in it which I would have discharged out of somewhat of mine there and I desire that in case Mr. Copley will not be contented to let the house to Mr. Gilmett till midsummer which shall be Anno Dom. 1645 at some such reasonable rent as my said commissioners or any two of them (whereof the said Mr. Giles Brent to be one) shall think fit and that Mr. Gilmett's and his family's diet cannot be provided and discharged out of my stock and farm at West Saint Mary's without any notable prejudice to the said stock or out of some other profits to me belonging there (both which I should be very glad that my said commissioners could effect for me and I would willingly allow any reasonable rent to be paid out of my estate there to Mr. Copley for the said house for so long time but not to be charged to pay any thing here for it) then I desire my said commissioners in that case to take care that some other convenient place there be provided for Mr. Gilmett's and Mr. Territt's residence and diet there to their contentment till the time above mentioned with the best accommodation for them, and least charge to me that may be, and I would have them so contrive this business (if possibly they can) that Mr. Gilmett and Mr. Territt may by all means be continued in that province till that time, when I doubt not (by the grace of God) to be able to provide better for them than by reason of the extremity of the present troubles in England, I could do this year, which I hope they will consider and have a little patience till then; and this article I do again and again recommend to my said commissioners' care, to give satisfaction herein.

8. That the instructions be read to all the said commissioners in due time and place, to the end they may respectively take notice of them. Given under my hand at Bristol, 18th November, 1643.

C. BALTIMORE."

[Taken from "Council Proceedings from 1636 to 1657," p. 114-116.]

NOTE (LIV.) p. 285.

"Commission for the government," (of September 18th, 1644.)

"Cecilius, &c., lord and proprietor of the provinces and countries of Maryland and Avalon, in the parts of America, lord baron of Baltimore, &c., to all and singular persons to whom these presents shall come, greeting: Know ye that we, for divers special causes and considerations us thereunto moving, have revoked, and determined, and by these presents do declare, that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to Giles Brent, esq., concerning the government of our said province of Maryland, and all power and authority by us thereby granted unto him or them, or to any other of our council, or to any person or persons whatsoever, in and by the said commissions, or any of them, and also all power heretofore given to our said brother, or the said Giles Brent, by the said commissions, or any of them, or otherwise of enacting or assenting unto any laws or ordinances in our name, within the said province; and we do hereby likewise discharge all and every person and persons whatsoever from our council, and to be of our council within the said province of Maryland, which heretofore have been of our council there, Nevertheless, considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established, as well for the cherishing of the virtuous and orderly, as for the punishment of the lewd and disorderly persons there, and calling to mind the faithful and laudable service done by our said dear brother Leonard Calvert, esq., as well in the adventure of his person in the first discent and settling of our colony, within our said province of Maryland, as in the good order and advancing of the same, by his personal residence within the same our said province, wherein he hath manifested to the satisfaction of ourself and of our colony there, such wisdom, fidelity, industry and other virtues, as render him capable and worthy of the trust hereby by us intended to be reposed in him, have nominated, constituted, ordained, authorised, established, and by these presents do nominate, constitute, ordain, authorise and establish, the said Leonard Calvert, in the absence of us and our heirs, our lieutenant general, admiral, marshall, chief captain and commander, as well by sea as by land, of our said province of Maryland, and the islands to the same belonging, and do by these presents grant unto him the chief commandment and absolute authority above and in all matters of warfare, by sea and land, to execute and administer the same to the resistance of the enemies or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious, for the preservation of our said province, and to do all such other things as do belong or appertain to the office of a lieutenant general, admiral, marshall, chief captain or commander, in as large and ample manner, to all intents and purposes, as we ourself might do if we were personally present by force or virtue of the letters patent, to us granted by our sovereign lord, king Charles, under the great seal of England, bearing date at Westminster, 20th June, eighth year of his majesty's reign, to have, hold, execute, and administer the same with such and as ample power and authority as we, if we were personally present, might do or execute the same by force or virtue of the letters patent aforesaid, until we shall signify our pleasure to the contrary; and we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland, all captains, officers and soldiers, as well by sea as by land, whom it doth or may concern, all our officers, receivers, bailiffs, marshalls, and all other persons whatsoever within our said province of Maryland, of what quality or condition soever that they and every of them acknowledge the said Leonard Calvert in the quality of our lieutenant general, admiral, chief captain, and commander over all our foresaid province of Maryland and islands, and members of the same,

Former commissions revoked.

Leonard Calvert to be lieutenant general.

This commission to be proclaimed within the province.

and do honour, respect and obey him as they ought to do, upon pain of such punishment to be inflicted upon them, and every of them, as such a high contempt as the disobedience and neglect thereof shall deserve, And to the end that no man shall pretend ignorance, we do command this our commission and ordinance to be proclaimed and published within our said province at the places accustomed to proclaim and publish any our edicts and ordinances, commanding him our said lieutenant to proceed with rigour against all contemners and neglectors of the same, in such strict and severe manner as we ourself might do by force and virtue of the said letters patent, if we were there personally present, and that without favour or connivance.

Leonard Calvert to be chancellor, chief justice, &c.

And we do further by these presents make, constitute, ordain and establish our said brother to be our chancellor, chief justice, and chief magistrate, within our said province, until we or our heirs shall signify the contrary under our hand and seal, and do hereby give him power from time to time to appoint and constitute officers and ministers for the administration and execution of justice, and for the doing and executing all other things whatsoever which belong to the establishing and government of a good and happy commonwealth within our said province.

Power to him to call and summon assemblies.

And we do further by these presents grant unto him our said lieutenant, chancellor, chief justice, and chief magistrate, full and absolute power and authority, when and as often as he shall think fit, to call and summon one or more general assembly or assemblies of the freemen of our said province, or their deputies, at such place or places within our said province as he shall think fit, for the enacting of wholesome laws and ordinances for the government and well ordering of the said province, and the people within the same, to which purpose we do hereby grant full power and authority unto our said lieutenant, from time to time, in every general assembly to be summoned by him within the said province of Maryland, in our name, stead and place, to enact and assent unto such laws and ordinances as he our said lieutenant shall think fit and necessary for the good government of the said province of Maryland, and which shall be consented unto and approved of by the freemen of the said province, or the major part of them, or their deputies, to be assembled by him our said lieutenant there, from time to time, for the enacting of laws within that province, Provided, that the said laws so to be enacted and assented unto by him our said lieutenant, there in our name, be as near as conveniently may be agreeable, and not contrary to the laws of England, and that every one of the said laws so to be enacted and assented unto in our name, be made to continue in force till we or our heirs shall signify our dissent thereto, under our or their hand and seal, and not to continue in force only for any other limited time, as till the next ensuing general assembly thereafter, the making thereof, or for any certain number of years, as divers laws heretofore have been made there, which causes a great deal of uncertainty, and produces many ill effects in the government there, Provided also, that our said lieutenant do not, in our name, enact or assent unto any law for the constitution, confirmation, alteration or change of any officer or officers within the said province, or which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions, over or in the said province, granted to us and our heirs by the letters patent above mentioned, every which law so to be assented unto and enacted by him our said lieutenant general there, in our name, and consented unto and approved of by the said freemen or their deputies, or the major part of them, in such manner as aforesaid, we do hereby declare, shall be in force within the said province until we or our heirs signify our or their dissent thereunto, under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same, under our or their hand and

And to assent to laws.

Proviso--- that said laws be agreeable to the laws of England.

And to continue only until his lordship's dissent thereto, and not for any other limited time.

Proviso--- also, against any laws for the constitution or change of officers.

seal, And we do by these presents grant full power and authority unto our said lieutenant to adjourn, prorogue, and dissolve all and every such assembly and assemblies by him heretofore called, or hereafter to be called at his pleasure.

Power to the lieutenant general to adjourn, or dissolve assemblies.

And forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws, will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require a speedy remedy; we do therefore hereby grant unto him our said lieutenant full power and authority, from time to time, to make, constitute, ordain and publish, in our name, such reasonable and profitable ordinances, edicts and proclamations, within our said province of Maryland, with reasonable pains and penalties therein to be expressed, to be duly inflicted on all offenders against the same, as he our said lieutenant in his discretion shall think fit, and as by the letters patent above mentioned is and are warranted, Provided that such penalties do not extend to the taking away the right or interest of any person or persons, of or in their life, members, freeholds, goods or chattels, nor be repugnant or contrary, but agreeable, as near as may be, to the laws established within the realm of England, and to the laws and ordinances established, or to be established within our said province of Maryland, all which edicts and proclamations shall stand in force only and until we or our heirs shall signify the contrary under our or their hand and seal, to him our said lieutenant and the people there, or that he our said lieutenant shall, in his discretion, think fit to repeal the same, or that the same be repealed in a general assembly of the said freemen or their deputies, to be called and assembled as aforesaid, with the consent of our said lieutenant.

Power to him to publish ordinances.

Proviso— that they do not affect the life or freehold of any person, or be not repugnant to the laws of England.

And further we do hereby grant full power and authority unto him, our said lieutenant, to appoint, from time to time, fit places for public ports for lading ships, unloading and discharging of all goods and merchandizes to be imported or exported into or out of our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish fairs and markets to be there held upon certain days for that purpose, to be by him appointed; and we do further by these presents grant full power and authority to him our said lieutenant, (if he see cause,) to pardon and remit in part, or in the whole, all pains, forfeitures or penalties, which any person or persons within our said province shall incur for any crime, misdemeanor or offence, against any the laws, ordinances or orders whatsoever, made or to be made for the good government of the province, and to grant pardons for all and every such delinquents, in our name, under our great seal of our said province, so as such pardon or pardons extend not to the pardoning of high treason, And further we do by these presents commit the custody and keeping of our great seal of our said province unto him our said lieutenant; and we do hereby further grant unto him our said lieutenant, power and authority for us, and in our name, to pass and grant under the same our great seal, all writs and processes, all commissions, as well for authorising such person and persons to be of our council there, as we shall from time to time appoint by warrant or direction under our hand and seal, as for the execution of justice, and for dividing and bounding of lands, all pardons, licenses, and other public acts and deeds whatsoever, which shall at any time pass within our said province.

Power to him to appoint public ports, fairs and markets.

Power to him to grant pardons and remit forfeitures.

Except for high treason.

The lieutenant general to be keeper of the great seal.

And we do further hereby grant full power and authority unto him our said lieutenant for us and in our name to pass and grant under our great seal to such person or persons such proportions and quantities of land within our said province for such estate and interest and with such privileges and immunities as we have or from time to time shall give our said lieutenant warrant from under our hand and seal all which grants so to be made passed or granted after the same grants and the same warrants under our hand and seal for the passing thereof

Power to him to grant lands and the mode of granting regulated.

shall be enrolled by our secretary of the said province for the time being and after that our said secretary shall have certified under his hand upon the backside of every such grant—that the said grant and warrant under our hand and seal for the passing thereof are enrolled and that the grantee or grantees have performed the conditions of plantation (if the grant be passed by virtue thereof) concerning arms and ammunition or given caution for the performance thereof within one year next ensuing and also taken the oath of fidelity to the lord proprietor and also after that our surveyor general there for the time being or his deputy shall have likewise certified under his hand on the backside of every such grant that the land therein mentioned hath been truly surveyed and contains no more in quantity than it ought to do by warrant from us we do hereby declare shall be effectual in law and not before against us and shall bind us and our heirs as firmly as if Sisery and Seisin had been given and executed thereupon.

The lieutenant general to advise with the council.

And we do will and require our said lieutenant to advise as there shall be cause with those who shall be from time to time nominated of our council upon all occasions concerning the good government of our said province of Maryland and the people there.

Lieutenant general constituted sole judge in all causes criminal, except in capital cases, and in all causes civil, except in cases of freehold, and causes testimonial.

And we do further hereby grant full power and authority unto our said lieutenant to inquire hear determine and finally to judge of and upon all causes criminal whatsoever of what nature and quality degree or condition soever the same shall be which may happen or arise within our said province of Maryland according to the laws of the said province or in default thereof according to his best discretion as fully and absolutely as we ourself might do by force and virtue of the letters patent aforesaid if we were personally present to give sentence and judgment of in or upon the same (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgment, And also to hear and determine all civil causes actions suits and demands both in law and equity of or concerning any goods chattels or contracts debts or demands or other personal or mixt actions suit or suits whatsoever (excepting where the freehold of any person or persons shall come in question and excepting causes testimonial) in the most summary and equal way that he may according to the laws and statutes of that our said province of Maryland already made and established or hereafter to be made and established and in default of such laws established or to be established within the said province of Maryland then according to his best discretion in as ample manner as we ourselves were we present could hear and determine the same by virtue of the said letters patent, And where the life member or freehold of any person or persons shall happen to come in question within our said province of Maryland we do hereby grant unto him our said lieutenant and unto such persons as we have or shall from time to time by commission under the great seal of our said province nominate and appoint to be of our council within the said province of Maryland or unto any three of them whereof our said lieutenant to be always one full power and authority to inquire hear and determine thereof according to the laws of the said province of Maryland established or to be established and in default of such laws there established or to be established according to their best discretion in as ample manner as we ourselves were we present could inquire hear and determine the same and to award execution accordingly.

Lieutenant general and two of the council judges in cases where life, member, or freehold are involved.

And lastly, whereas our said lieutenant may happen to die or be absent from time to time out of the said province of Maryland before we can have notice to depute another in his place we do therefore hereby grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint such an able person inhabiting and residing within our said province

Power to the lieutenant general, in case of his death or absence, to appoint his successor.

of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general chancellor keeper of our great seal there admiral chief justice magistrate and commander as well by sea as by land of the said province of Maryland and of the island to the same belonging during the absence of us and our heirs and of him our said lieutenant out of the said province and in as large and ample manner as we have by these presents authorized him our said lieutenant to govern for the present, And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant, &c., we do hereby grant unto our councillors there for the time being or the greater part of them full power and authority from time to time in every such case to nominate elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant, &c., which person so to be chosen and appointed in any of the cases aforesaid we do hereby declare shall be our lieutenant, &c., during the absence of our brother, &c., or until we or our heirs shall signify our pleasure to the contrary and no longer to which lieutenant, &c., so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother hereby commanding our councillors captains soldiers and officers for the time being and the people of the said province of Maryland and all others whom it may concern to be obedient unto him in all things matters and causes as we have in and by these presents commanded them to be obedient unto our said brother our present lieutenant upon pain of such punishment to be inflicted on them and every of them as such a high contempt shall deserve.—Given under our great seal of our said province of Maryland at our fort of St. Mary's within our said province on the eighteenth day of September 1644.

In case of his failure to do so, the council to appoint one of their own body thereto.

"Commission for the Council.

Cecilius, &c., to our dear brother Leonard Calvert, esqr., our lieutenant of our said province of Maryland and to our trusty and well beloved Giles Brent, John Lewger, Thos. Greene, Thomas Gerard, and James Neale, esqrs, greeting, know ye that we reposing special trust and confidence in your wisdoms, diligence, and experience have assigned and appointed you jointly and every of you severally to be of our privy council within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times untill we shall determine or otherwise revoke this present commission to assemble and meet together with our lieutenant or other chief governor of the said province for the time being when and where he shall from time to time direct and appoint to treat, consult, deliberate, and advise of all matters, causes, and things, which shall be discovered unto you or be brought afore you as well concerning the quiet government and regulating of the people there as for the good and safety of our said province of Maryland and for the better, &c., *ut supra* anno 1642 P. Given under the great seal, &c.

"Commission of Secretary.

Cecilius, &c., to all and singular persons to whom these presents shall come, greeting, Having had long experience of the abilities and industry of our trusty and well beloved councillor John Lewger, esqr., in performing unto us good and faithful service in the said province of Maryland and reposing special trust in his wisdom, diligence, and experience have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said John Lewger to be our secretary of our said province of Maryland and also judge of all causes testamentary and matrimonial within our said province of Maryland, and

we do hereby give him power to grant letters of administration from time to time in our name of the estates of deceased persons within our said province of Maryland under our signet or lesser seal of our coat of arms now in the custody of our said secretary, and with the test of the said John Lewger, as occasion shall require, and we do by these presents appoint constitute and ordain the said John Lewger as well to be our attorney general as our principal officer and keeper of the acts and proceedings of us and of our lieutenant general and council there for the time being and of and for the entering and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland and for the entering and recording of all other matters acts and things which by my instructions laws or ordinances made or given or to be made or given for or concerning our said province of Maryland shall or ought by the appointment of us and our heirs or by the appointment of our lieutenant or other chief governor there for the time being or otherwise to be entered and recorded, to have and to hold execute and enjoy the said office and offices unto the said John Lewger during our pleasure and no longer. Given under our great seal, &c."

[N. B. The foregoing commissions to the governor, council, and secretary are copied from the book, entitled, "Council Proceedings from 1636 to 1657," p. 126, and 137. The two last are, as above, without any expressed date; but must be supposed to have been of the same as that of the principal of them, to the lieutenant general. The words—"ut supra anno 1642," refer to the former commission of that date, and purport that the remaining part of it was the same as that for the council of 1642, which seems to have been somewhat consonant to the common form of a commission to a justice of the peace.]

NOTE (LV.) p. 290.

"An act for the defence of the province."

"It shall be lawful for the governor for this year only to settle a garrison at Piscattoway, and to assess the charge of it upon every head able to bear arms inhabiting within the province, at any time afore the first of December next, so that such charge upon any head exceed not a barrel of corn, or fifty pound of tobacco with cask, at the choice of the party, and to press any soldiers to that service at the rate of three and twenty barrels of corn, or one thousand weight of tobacco with cask, and three barrels of corn, for a year's pay, and to appoint the payment of such soldier in such hundred and such place of the hundred, as the governor shall see fittest; and to appoint one or two places in every hundred to which all persons chargeable within the hundred shall bring the corn or tobacco charged upon them before the first day of December next; and if any one chargeable as aforesaid shall not pay the same according to such order as shall be appointed by the governor as aforesaid, such party so in default shall forfeit to the party to whose payment he was charged, double the quantity of the value of the tobacco or corn so charged, to be levied upon the party offending, by way of distress, and the charge of the late expedition to Kent, and of this assembly, as shall be allowed by the court, to be defrayed out of this levy. Published under the great seal, 13th February, 1644."

[Taken from the book in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 305.]

NOTE (LVI.) p. 303.

An ordinance of the lords and commons of England. (Jan. 23d, 1646.)

Whereas the several plantations of Virginia, Bermudas, Barbadoes, and other places of America, have been much beneficial to this kingdom, by the increase of navigation, and of the customs arising from the commodities of the growth of those plantations imported into this kingdom, &c., Be it ordained by the

lords and commons in parliament, That all merchandize, goods, and necessities, which shall be for the supportation, use, and expence for the severall places in *Virginia, Bermudas, Barbadoes*, shall and may be exported from this kingdome, without paying any custome, subsidie, taxation, or other imposition, or duty for the same, the duty of excise excepted, during the space of three yeares nextensuing, except unto the plantation of Newfoundland, Provided, security be given to the officers of the customes, that the said merchandizes and goods so to be exported shall be really transported unto the said forrein plantations and no other places, there to be used for the onely use of the said plantations.

II. That it shall be lawful for any persons, subjects of this kingdome, to transport from hence unto the sayd plantations such persons as being fit to advance the trade shall be willing to be employed in the severall plantations: Provided the names of them be registered in the custome house book, and neither force used to take up such servants nor any apprentices entred to desert their masters, nor any children under age, admitted without the consent of their parents; and also that certificate be returned from the governor of such plantation within one yeare of the arrivall of the sayd persons there. And provided, that none of the sayd plantations do suffer or permit any ship, barke, or vessell to take in any goods of the growth of the sayd plantations from any of their ports, and carry them to any forrein parts, except in English bottoms; and if any of the sayd plantations shall offend therein, the sayd plantation shall be excluded from the benefit of this ordinance, and shall pay custome as other merchants do to France, Spaine, &c., or other forrein parts.

[The above copy of the ordinance is taken from Hazard's Collections, vol. i, p. 634; except, that the preamble prefixed to it is from *Holmes's Annals*, vol. i, p. 341, who cites it as from *Anderson's Commerce*, vol. ii, p. 404-5.]

NOTE (LVII.) p. 309.

Letters between Sir William Berkeley, Mr. Edward Hill, and governor Greene.

FROM SIR WILLIAM BERKELEY TO GOVERNOR CALVERT.

"Sir,—I received your letter concerning your mare, but could never learn who brought it, nor who was to receive and return my answer; but by this opportunity, have sent to Mr. Trussel speedily to deliver the mare and colt to you. Mr. Hill has often spoke to me to desire me to write to you, that you will give him satisfaction for some things which were left, and some things which are in your hands, and that he might have such conditions as you and he subscribed to. I told him he need not doubt, but you would give him all satisfaction, but he was so earnest with me to write, that I could deny him to speak to you to do him justice. The particulars of his demands I know not, but shall desire you to satisfy him in what is justly due to him. This is all at present. Your humble servant,

WILLIAM BERKELEY.

June 12th, 1647.

Endorsed—For the honble. Leonard Calvert, esqr. governor of Maryland.

From Mr. Edward Hill to governor Calvert.

"Honoured Sir,—My occasions to Appamatuck induced me once more to send over to desire those dues that are justly owing to me from you for my salary in that unhappy service, viz: half the custom, half rents, and satisfaction for Colclough's horse. You know it is mine even by your promise, where you offered me the exchange of your filley at Chicocoan. I satisfied Sir William Berkeley in this cause and procured his letter, which, if it prevail not, hath left me to my remedy in the interim. I shall only desire a fair answer and that fame and suggested rumours altogether false shall not prejudice my right. I request your answer and rest yours, if you please,

EDWARD HILL.

Chicacone, this 18th June, 1647.

Postscript.—The remainder of the levy I hope you will see satisfied and my 146 arm's-length of Roanoak.

Endorsed—To the honourable Leonard Calvert, esqr.—These present.

Governor Greene's answer to captain Hill.

"Sir,—The noble gentleman, to whom yours were directed, is some days since laid in his grave, and hath appointed me here in his stead. For answer therefore to your demand concerning the customes, half rent, and satisfaction for Colelough's horse I not as yet understanding the business can make you no other answer than that whenever you please to send your attorney hither to plead your right you shall receive full satisfaction according to what justice will allot you. The rumours you mention we regard not, being fully determined (if any such things shall be true) to give the disturbers of his majesty's the king's peace their due punishment at any time when they shall invade us, and for your good therefore whatever we hear to the contrary we wish you shall be none of them. The remainder of your levy the law hath so fully provided for you that you need not doubt by our having it when tobacco comes payable. The 146 arm's-length of Roanoak you may please to add to the claim above mentioned wherein justice shall be duly administered unto you. Sir, I rest your friend,

This 19th June, 1647.

THOMAS GREENE.

Endorsed—To captain Edward Hill.—These present.

From captain Hill to Mr. Greene and captain Giles Brent.

"Honoured Sir,—I doubt not but you are familiar to such unhappy passages as were the first inducements to me for the entertainment of the government of Maryland, and although the specious pretence of that clause of absence in the governor's commission was the whole pretended title of a *reinvation*,* I am confident it would not be held sufficient to the usage of force, even by his lordship against his lordship's government then instated on me, for these ensuing reasons.

1st. The late governor being out of the province had not power to grant commission for to rule them.

2dly. His lordship's council had then the immediate power in the election and choice of a governor, which, as the state of things then stood, they supposed it absolutely necessary for the safety of the province to confirm me independent of any contradiction but his lordship and this assembly.

3dly. If the late invasion should be held lawful I doubt not but you are sensible to what a slavery the king's freeborn subjects and so consequently yourselves are involved in, when the single power of a governor should disannull his own and the country's act by a countermand, his own I say, tho acted by another person.

Gentlemen,—“I presume upon this to make this petition, that the government of the said province is as inherent to me till his lordship's pleasure be further known as his lordship's right in the said province or as you his council. What insufferable losses both of fortunes and credit I have sustained I doubt not but report hath brought it to you, but inducement of friends with the throngs of those that have been ruined by the unjust breach of the composition are daily clamorous in my ears, so that even justice if not credit or loss will force me I fear to some strange overture in that business. I am altogether unwilling to move the stone violently. What inundation, loss, and ruin it will produce to the whole I am not ignorant of. I had rather some moderate way were taken for the satisfaction on all sides—occasion (by the death of the late gent. (is now bald ————)† all discontents may be easily pacified and brought to good

*This word is so written in the record, but it seems to have been intended for the word—*re-invasion*; meaning the *invasion* of governor Calvert, after that of Ingle and Clayborne.

†The defect above is so in the record.

terms of qualification, Peace may breath a quiet possession unto them and every one there resident, but if the storm once break out, it is to be feared that proceeding from such an influence of discontent that it may overwhelm the whole.—Sirs, in this there is only difference in the persons of the governor, not his lordship's title infringed nor the peace, so that you may be confident it may be acted without evil or the punishment thereof which will happily fall on the opposers.—Howsoever, (since Sir William Berkeley's letters nor my own can procure a private right but by attorney) I have little hope to prevail in this business of such concernment, yet that I might give a fair demonstration to the world and his lordship of all proceedings, I have adventured to write thus much unto yee his council, and in all friendly love request your answer. I would to the uttermost of my power endeavour the safety of the province under his lordship; if it fail, for all that I know you may be blame-worthy; for, others of humour different from mine privately embrace a parliamentary influence, which may prove fatal to the whole. Gentlemen, I leave this to your consideration and rest your very loving friend,

EDWD. HILL.

Checakone, this 20th of June, 1647.

Postscript—Gentlemen, I have stopt my return to Virginia in expectation of your answer, which I hope will be speedy and in that very courtesy I shall rest thankfully yours,

EDWARD HILL.

Endorsed—To his hond. friends—Mr. Thomas Greene and captain Giles Brent—these present.

From Governor Greene to Captain Edward Hill.

“Sir,—Whereas your vain claims of right to this government are grounded upon this false pretence, that the late governor being out of the province and not nominating one in his stead, the council residing in the province had full power and authority to elect and choose you, which is evident they had not, as the words of his lordship's commission plainly show, for the words of his lordship's commission in brief are these,—that in case our lieutenant shall happen to die or be absent out of the province, and shall fail to make choice of some person to be our lieutenant, &c., we do grant to our councillors full power in such case to elect such an able person, inhabiting and residing within our said province, which shall be one of our council there, which I presume you are none of,—if you are, we understand it not as yet. As for your menacing us with dangers and fears, we regard them not, desiring you in courtesy, if you please, to desist from such unlawful ways. The government is now lawfully instated upon me, one of his lordship's council, whose right and title I am resolved (God willing) to defend and maintain with all that is dear unto me my life; the rest of your kind threatening letter I pass it over as not regarding it, only this I say, that if his lordship shall appoint you to be his governor here, (to whom I hear you have written to that purpose,) after his lordship's signification therein, I shall readily resign unto you, but your boasting threats and other vain persuasions shall not easily allure me to it before his lordship's pleasure known therein. I rest your friend,

THOMAS GREENE.”

St. Inigoe's Fort, this 21st June, 1647.

Endorsed,—To Captain Edw'd. Hill—these present.

From Governor Greene to Sir William Berkeley.

“Honoured Sir,—Your letter dated the 12th of June last, and directed to Mr. Calvert, came into my hands, the said Mr. Calvert being dead some few days afore, who substituting me in his stead, I make this answer to your request in the said letter concerning captain Hill, who much without reason seems to suspect and doubt the justice of this court; and whereas, sir, in his behalf you desire he should be satisfied in what shall be justly due unto him, I am confi-

dent never was nor ever would have been denied him by the noble gentleman, deceased, without any such solicitation from you, nor shall captain Hill, I hope, ever have just cause of clamour for any thing unjustly detained from him here, so long as I shall have any interest in the government of this province, and these are humbly to intreat you to take some effectual course that captain Hill may not by his evil designs and practices, proceed to disturb his majesty's the king's peace here, of whose unjust and wicked designs of invading this province by the way of Chicacoan and Appametucks with some other forces to be drawn out of other parts of Virginia, we have daily credible information by others and of late expressions of his own sent unto us under his own hand from Chicacoan to that purpose, for as I would not willingly this colony should be further embred in the effusion of blood, if it may be avoided, so likewise I will not be understood so unresolved as not to be fully determined to give him his due and deserved punishment whenever we shall be invaded by him. The government of this province under his lordship being now lawfully instated upon me by the nomination of Mr. Calvert at his death, I am resolved by God's help to defend and maintain, though it be with the hazard and ruin of the whole, rather than to yield the least jott of his lordship's right and title here, so clearly due to him to the will and malice of such rebellious spirits; and shall not doubt but the advisers, abettors, and even the most private suggestors, as well as the open actors of such outrages, will in their due time be brought to light, shame and confusion. Thus, in a confident expectation of some speedy stay by your authority to these intended mischiefs of captain Hill's upon this colony, so much recommended to your protection and assistance by his majesty's letters,

I rest your humble servant,

THOMAS GREENE.

Endorsed—To the Right Hon'ble Sir William

Berkeley, Knt. Gov'r of Virginia—these present."

[N.B. No date appears in the record to this last letter. The preceding copies of these letters are taken from the book in the council chamber, entitled "Council Proceedings from 1636 to 1657," p. 154 to 161.]

NOTE (LVIII.) p. 326.

"The oath of Captain John Price taken in open Assembly, 29th February, 1647.

"This deponent saith, that he questioning Mr. Calvert, how the great charge incurred should be paid, the said Mr. Calvert replied, that the charge should be paid out of his own estate and his lordship's estate, and if that were not sufficient, he would engage the province even with the sale of his lordship's patent.

Walter Pakes deposeth in open assembly, that one Elias Beech declaring to Mr. Leonard Calvert in presence of this deponent, that he would depart the province for fear of great charges for payment of soldiers' wages like to light upon the country, to whom Mr. Calvert replied, that his own estate and his brother's should pay the soldiers, and that no other charge should come upon the country more than the 60 lb. of tob'o. a hh'd. and further added saying if that will not do I will engage his lordship's country for the satisfying of the said soldiers.

Lieutenant William Evans deposeth in open assembly, that he hath heard Mr. Leonard Calvert say words to this effect, whereas he found it necessary to maintain such a charge in defence of the province, if his lordship's estate in the province could not defray the charge, his own should, and if that would not he would engage his lordship's province.

William Whittle deposeth in open assembly, that he hath heard Mr. Calvert say, that his lordship's estate and his own estate should go towards the payment of the soldiers, and if that were not sufficient, he would engage the province; and in particular he the said Mr. Calvert agreed with the soldiers to take cowes

with calf or calves by their sides at the rate of 600 lb. of tob'o. and heifers in calf or calves by their sides at 500 lb. tob'o. towards their wages.

Mark Pheypo deposeth in open assembly, *idem ad verbum quod* William White *ut supra.*" [Taken from "Assembly Proceedings from 1637 to 1658," p. 321.]

NOTE (LIX.) p. 327.

Proclamation of Pardon.

"Whereas sundry the inhabitants of this province, by instigation of one Richard Ingle, have unfortunately run themselves into a rebellion against the lord proprietary of this province, and therein have committed divers insolencies and robberies against the laws of this province, but are now returned into obedience again and submitted themselves to his lordship's government, I do hereby in his lordship's name by virtue of his commission in that behalf publish and grant a general absolute and free pardon, unto every and singular the inhabitants residing within this province, of all crimes of rebellion, sedition and plunder, and of all other offences whatsoever, of what nature soever committed within this province, against the laws of the province, from the 14th of February, 1644, unto the sixteenth day of April last past, and of all losses of life, goods or lands, and of all other penalties incurred by the said offences or any of them, and I do further declare in his lordship's name, that every other person out of the province acknowledging sorrow for his fault, and requiring pardon before the feast of St. Michael the archangel next, shall have such pardon granted unto him under my hand and the seal of the province, excepting Richard Ingle, mariner.—Given at St. Mary's, 4th March, 1647. THOMAS GREENE."

[Taken from "Council Proceedings from 1636 to 1657," p. 166.]

NOTE (LX.) p. 327.

"PROCLAMATION

"By the Governor and Generall of Maryland.

"Whereas I am given to understand of the enemies being actually on foot, intending (if possibly they may) to invade us, and considering the danger of the present times, and how troublesome and inconvenient it may prove to divers inhabitants of this province, and prejudicial to the whole to hold a court in the beginning of June next, (especially all causes being to be tried by a jury, which will much weaken those parts from whence they come,) there being no business of that consequence or so urgent at this time in the province to be heard and determined, but may suffer delay; and being desirous to provide in the best manner I may for the good and safety of the province, these are to give notice to all the inhabitants of St. Mary's county, and to all others whom it may concern, that I have adjourned all causes to be tried this next court in the beginning of June, untill October next; reinforcing all writs, warrants or other process, returnable this next court as aforesaid, untill October; and all jurors and others warned upon summons bound to attend this court, are to take notice hereof, and give their attendance at the court to be held in the beginning of October as afore.—Given at St. Mary's this 22d May, 1648. THOMAS GREENE."

[From "Council Proceedings from 1636 to 1657," p. 166.]

NOTE (LXI.) p. 328.

"This day the freemen of the county of St. Mary's met together at the governor's to advise touching the levy of the charges incurred this present year and determined by the governor and council on the 9th of October last to be levied out of the county, the whole charge amounting to 7752 lb. tobacco and cash, the freemen alledge that the charge for imprisonment of the Indians is unduly laid upon

the county, but alledged not any thing material for it, Whereupon the governor found no reason to alter the former order set down by the governor and council as above; as concerning the manner of levying the said charge, the freemen unanimously agreed and concluded, that it should be levied upon all the tytheable persons inhabitants of St. Mary's county equally per head that were residing in the county from the tenth of June last which resulteth to 55 lb. tobacco.

June 14th, 1648."

[From the book entitled "Assembly Proceedings from 1637 to 1658," p. 338.]

NOTE (LXII.) p. 336.

"A commission from the lord proprietary constituting William Stone, esqr., his lieutenant, &c., of Maryland."

A revocation of all former commissions to any governor heretofore.

NOTE. The marginal abridgments here inserted are not in the record.

All former councillors discharged.

William Stone, esqr. appointed governor.

Cecilius absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltimore, &c., to all the inhabitants and people in Maryland and to all others to whom these presents shall come and any way concern, greeting. Know ye, that we for divers special causes and considerations us thereunto moving have revoked and determined and by these presents do declare that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esqr., late governor of Maryland deceased or to any other person or persons whatsoever concerning the government of the said province of Maryland and all powers and authority by us thereby granted unto him or them or to any other of our council or to any other person or persons whatsoever in or by the said commissions or any of them and also all power heretofore given to our said brother or any other person or persons by the said commissions or any of them or otherwise of enacting or assenting unto any laws or ordinances in our name within our said province of Maryland, and we do likewise hereby discharge all and every person and persons whatsoever from our council and to be of our council within the said province of Maryland which heretofore have been of our council there, nevertheless considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established as well for the cherishing of the virtuous and orderly as for the punishment of the lewd and disorderly persons there, and whereas our trusty and well beloved William Stone now or late of Northampton county in Virginia esqr., hath undertaken in some short time to procure five hundred people of British or Irish descent to come from other places and plant and reside within our said province of Maryland for the advancement of our colony there and being confident of his wisdom, fidelity, industry, integrity, and other virtues which render him capable and worthy of the trust hereby by us intended to be reposed in him have nominated, constituted, ordained, authorized, and established, and by these presents do nominate, constitute, ordain, authorize, and establish the said William Stone our lieutenant, chief governor, general, admiral, marshall, chief captain and commander as well by sea as by land of our said province of Maryland and the islands to the same belonging, and by these presents do grant unto him the chief commandment and absolute authority under us above and in all matters of warfare by sea and land to execute and administer the same to the resistance of the enemies or suppression [of] mutinies and insolencies as our said lieutenant shall think most commodious for the preservation of our said province and our rights and dominion there and to do all such things as do belong or appertain to the office of a lieutenant general, chief governor, general, admiral, marshall, chief captain or commander under us of the said province of Maryland in as large and ample manner to all intents and purposes (except hereafter excepted) as we ourselves might do if we were personally present to have, hold, execute and administer the same with such and as ample power and authority as if we were person-

ally present to have, hold, execute and administer the same with such and as ample power and authority as if we were personally present might do or execute the same (except hereafter excepted) until we or our heirs shall signify our or their pleasure to the contrary, and we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland all commanders captains officers and soldiers as well by sea as by land whom it doth or may concern all our officers receivers bailiffs marshalls and all other persons whatsoever within our said province of Maryland of what quality and condition soever they be that they and every of them do acknowledge the said William Stone in the quality of our lieutenant chief governor general admiral chief captain and commander under us over all our said province of Maryland and the islands and members of the same and to honour and respect and obey him as they ought to do upon pain of such punishment to be inflicted upon them and every of them as such a high contempt of disobedience and neglect shall deserve, and to the end that no person within our said province of Maryland shall pretend ignorance hereof we do command that this our commission and ordinance be proclaimed and published within our said province at the places accustomed to proclaim and publish our edicts and ordinances commanding him our said lieutenant to proceed to punish all contemnors and neglectors of the same in such strict and severe manner as we ourself might do if we were there personally present and that without favour or connivance, and we do further by these presents make constitute ordain and establish the said William Stone to be our chancellor chief justice and chief magistrate within our said province until we or our heirs shall signify our or their pleasure to the contrary, and we do hereby give him power from time to time to appoint and constitute officers and ministers excepting councillors and such other officers as shall be from time to time immediately appointed by commission or warrant from us under our hand and seal of arms for the administration and execution of justice and for doing and executing of all other things whatsoever which doth belong to the establishment and government of a good and happy commonwealth within our said province and the preservation of our rights and dominion there, and do further by these presents grant unto him our said lieutenant chancellor chief justice and chief magistrate full and absolute power and authority when and as often as he shall think fit to call and summon in our name from time to time one or more general assembly or assemblies of our freemen of our said province of Maryland or their deputy or deputies at such place or places within our said province as he shall think fit for the enacting of wholesome laws and ordinances for the government and well ordering of the said province and people within the same to which purpose I do hereby grant full power and authority unto our said lieut. from time to time in such general assemblies to be so summoned by him in the said province of Maryland in our name stead and place to enact and assent unto such laws and ordinances as he our said lieutenant shall think fit and necessary for the good government of our said province of Maryland and which shall be consented to and approved of by our freemen of our said province or the major part of them or their deputies to be assembled by him our said lieutenant there from time to time for the enacting of laws within that province as aforesaid, Provided that the said laws so to be enacted and assented to by him our said lieutenant there in our name be as near as conveniently may be agreeable and not repugnant or contrary to the laws of England and that every one of the said laws so to be enacted and assented unto in our name be to continue in force till we or our heirs shall signify our or their dissent thereunto under our or their hand and seal and no longer, Provided also that our said lieutenant do not in our name or otherwise enact or assent unto the repeal of any law or laws already enacted or which shall be from time to time hereafter enacted in our said

This commission to be proclaimed and published at the usual places within the province.

Governor Stone to be chancellor and chief justice within the province.

Power to the governor to appoint all officers except councillors, and such officers as shall be appointed immediately by his lordship.

Power to him to call assemblies.

Power to him to assent to laws.

Provided that such laws be agreeable and not repugnant to the laws of England. And to continue in force until his lordship's dissent thereto.

Provided also, that the governor do not assent unto the repeal of any law to which the lord proprietor assents.

Nor assent to any law for constituting offices.

Or which impose any fine, &c. to other use than to the lord proprietary.

Or which concern religion, &c.

without special warrant from the lord proprietary.

Laws so enacted to be in force and valid unless his lordship signify his dissent thereto and no longer.

Laws confirmed to be perpetual.

Power to the governor to adjourn, prorogue, and dissolve assemblies at pleasure.

Power to the governor to make ordinances, &c.

Governor to appoint places for public ports, and officers for the same.

And to erect and establish fairs and markets.

province of Maryland by us or in our name with the consent and approbation of our said freemen or the major part of them or their deputies nor unto any law or laws for the constitution confirmation alteration or change of any officer or officers within the said province, or which shall impose any fine forfeiture or confiscation to any other use or uses than to the use of us and our heirs lords and proprietaries of our said province of Maryland, to any law or laws which may any way concern matters of religion, constitution of parishes within our said province, payment of tithes, oaths to be imposed or taken by any of the people which are or shall be from time to time in our said province of Maryland, treasons, matter of judicature, or any matter or thing which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions and dominion over or in the said province of Maryland without further and special warrant from time to time under our hand and seal at arms first had and obtained and published to a general assembly of the freemen of our said province or their deputies and to be kept from time to time among the records of the said assembly there, every of which laws so to be assented unto and enacted by him our said lieutenant there in our name not any intrenching upon or infringing any of the provisions above mentioned and consented unto and approved by our said freemen or their deputies or the major part of them in such manner as aforesaid and not otherwise we do hereby declare shall be in force within our said province but if we or our heirs shall signify our or their dissent thereunto under our or their hand and seal at arms and no longer excepting such laws as we have or shall think fit to confirm by our special and immediate assent thereunto declared or to be declared under our hand and seal at arms which laws so already confirmed or which shall be so confirmed from time to time by our special assent as aforesaid and agreed unto from time to time by our said freemen or their deputies or the major part of them we declare shall be perpetual, And we do by these presents grant full power and authority unto our said lieutenant to adjourn prorogue or dissolve all and every such assembly or assemblies heretofore called or hereafter by him to be called at his pleasure, And forasmuch as the calling of a general assembly of our said freemen and the consulting about and enacting of laws will require long time and much consultation and many times sudden and other necessary occasions may happen or fall out which require a speedy remedy, We do therefore grant unto him our said lieutenant full power and authority from time to time to make, constitute, ordain, and publish in our name such reasonable and profitable ordinances, edicts, and proclamations within our said province of Maryland with reasonable pains and penalties therein to be expressed to be duly inflicted on all offenders against the same as he our said lieutenant in his discretion shall think fit provided that such penalties do not extend to the taking away of the right or interest of any person or persons of or in their life members freehold goods or chattels nor be repugnant or contrary but agreeable as near as may be to the laws established within the realm of England and to the laws and ordinances established or to be established within our said province of Maryland, all which edicts and proclamations shall stand in force only until we or our heirs shall signify the contrary under our or their hand and seal to our lieutenant for the time being and the people there or that our lieutenant there for the time being shall in his discretion think fit to repeal the same, and further we do hereby grant full power and authority unto him our said lieutenant to appoint from time [to time] fit places for public ports for lading ships unloading and discharging of all goods and merchandizes to be imported or exported into or out of our said province of Maryland and to appoint officers and ministers in the same places and ports and also to erect and establish convenient places for the holding and keeping of fairs and markets and to establish fairs and markets to be there held upon certain days for that purpose to be by him appointed

and we do further by these presents grant full power and authority unto him our said lieutenant during the time of his being our lieutenant there to pardon and remit if he see cause in part or in the whole all pains forfeitures or penalties which any person or persons within our said province shall incur for any crime misdemeanor or offence against any the laws ordinances or orders whatsoever made or to be made for the good government of our said province and to grant pardons for all and every such delinquents in our name under our great seal of our said province so as such pardon or pardons extend not to the pardoning of William Clayborne heretofore of the isle of Kent in our said province of Maryland and now or late of Virginia or of his complices in their late rebellion against our rights and dominion in and over the said province nor of Richard Ingle nor John Durford mariner nor of any other person or persons whom we shall hereafter at any time think fit to except from pardon by any act under our hand and seal and signified to our lieutenant before we have granted any pardon to such person or persons under our great seal there. And we do by these presents commit the custody and keeping of our great seal of our said province of Maryland unto him our said lieutenant and we do hereby further grant unto him our said lieutenant power and authority for us and in our name to pass and grant under the same our great seal all writs and protests all commissions for the execution of justice and for dividing and bounding of lands all pardons licences and other public acts and deeds whatsoever which shall at any time pass within our said province. And we do further hereby grant full power and authority unto him our said lieutenant for us and in our name to pass and grant under our great seal to such person or persons such proportions and quantities of land within our said province for such estate and interest and with such privileges and immunities as we shall from time to time give him oursaid lieutenant warrant for under our hand and seal at arms and not otherwise, all which grants to be made passed or granted after the same grants and the said warrants under our own hand and seal at arms for the passing hereof shall be recorded or registered by our secretary of our said province for the time being and after that our said secretary shall have certified under his hand upon the back side of every such grant that the said grant and the said warrant under our hand and seal at arms for the passing thereof are recorded and registered and that the grantee or grantees have performed our last conditions of plantation dated the 20th day of June last past if the grant be past by virtue thereof concerning the transportation of so many persons into our said province as is required by the said conditions for such a grant and also have taken the oath of fidelity to us and our heirs lords and proprietaries of the said province of Maryland mentioned in the said last conditions of plantation and also that our surveyor general there for the time being or his sufficient deputy shall have likewise certified under his hand on the back side of every such grant that the said land therein mentioned hath been truly surveyed and contains no more in quantity than it ought to do by warrant from us, and after the grant shall be also testified by our said lieutenant subscribing his name thereto we do hereby declare shall be effectual in law and not before against us and our heirs and shall bind us and our heirs as firmly as if livery and seisin had been given and executed thereupon, and we do will and require our said lieutenant to advise as there shall be cause with those who shall from time to time by immediate commission or warrant from us under our hand and seal at arms be of our council there for the time being upon all occasions concerning the good government of our said province of Maryland and of the people there. And we do further hereby grant full power and authority unto our said lieutenant and unto our said council for the time being, who shall from time to time be then present in court or the major part of them whereof he our said lieutenant or his deputy being also of our said council to be always one and to have a casting vote

Power to the governor to grant pardons

Except to Clayborne, Ingle and Durford, or other persons specially excepted.

Governor to have the custody of the great seal and pass all public acts under the same.

Power to him to make grants of lands.

The governor to advise with the council.

The governor and council constituted judges of the provincial court.

In case of the governor's death or absence out of the province he may appoint a deputy.

The governor failing to appoint, the council to elect one of themselves.

to enquire hear and finally to judge of and upon all causes criminal and civil whatsoever of what nature kind quality degree and condition soever the same shall be which may happen within our said province of Maryland according to the laws from time to time in force of and in the said province and in default thereof according to his and their best discretion as fully and absolutely as we ourself might do if we were personally present to give sentence or judgment of or in or upon the same and to award execution upon every such sentence or judgment all and every powers and authorities above-mentioned we do hereby grant unto our said lieutenant William Stone and our said council till we or our heirs shall signify our or their pleasure to the contrary and no longer, And lastly, whereas our said lieutenant may happen to die or upon some urgent occasion to be absent from time to time out of our said province of Maryland before we can have notice to depute another in his place we do therefore grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint some one of our council there or in default thereof some able person inhabiting and residing within our said province of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general chancellor keeper of our great seal there admiral chief justice magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging during such absence of him our said lieutenant out of the said province or until we or our heirs signify our pleasure to the contrary in as large and as ample manner as we have by these presents authorised him our said lieutenant to govern for the present, and in case our said lieutenant shall happen to die or be absent out of said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant general chancellor keeper of our great seal admiral chief captain magistrate and commander of our said province of Maryland as well by sea as by land, We do hereby grant unto our councillors there for the time being or the greater part of them full power and authority from time to time in every such case to nominate elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant general chancellor admiral chief governor captain magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging which person so to be chosen and appointed in any of the cases aforesaid either by the nominating and election of him the said William Stone our present lieutenant or of our council as aforesaid we do hereby declare shall be our lieutenant generall chancellor keeper of our great seal admiral chief governor captain and commander of the said province of Maryland during such absence or in case of death of our said lieutenant Wm. Stone out of our said province or until we or our heirs shall signify our or their pleasure to the contrary and no longer to which lieutenant general chancellor keeper of our great seal admiral chief governor captain magistrate and commander so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents above granted unto the said William Stone and no otherways untill we or our heirs shall signify our or their pleasure to the contrary and no longer hereby commanding our councillors commanders captains soldiers and officers for the time being and the people of the said province of Maryland and all others whom it may concern to be obedient unto him in all things matters and causes as we have in and by these presents commanded them to be obedient to the said William Stone our present lieutenant general chancellor keeper of the great seal admiral chief governor captain magistrate and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve, Provided

always that before the said William Stone or any other in the cases of his death or absence above-mentioned shall take upon them or any of them any of the said offices hereby granted to the said William Stone or execute any of them or any of the powers and authorities granted by these presents to the said William Stone they and every of them especially the said William Stone shall take the oath entitled The Oath of the Lieutenant General or Chief Governor of the Province of Maryland signed with our hand and hereunto annexed to be administered unto the said William Stone and every of them upon the holy Evangelists by our secretary of the said province for the time being in open court or in his absence by two of our council there for the time being whom we do hereby authorise to administer the same accordingly, And because some other able persons may go and reside within our said province of Maryland before we can have notice thereof who may be fit to be of our council for the better assistance of our said lieutenant in the government there and whose names we cannot therefore put for the present in our commission under our hand and seal at arms and sent herewith for the appointment of such to be of our council within the said province as are nominated in our said commission, therefore we do hereby grant power and authority to our said lieutenant William Stone within twelve months after the date hereof to nominate two or three such able and faithful persons over and above those who shall be nominated by our said commission to be of our council in our said province every of whom we do hereby appoint to be of our council there to all intents and purposes and to have the like powers and authorities as if they and every of them had been nominated in our said commission for our said council or by any other particular warrant under our hand and seal at arms for that purpose and so to continue till we or our heirs have notice thereof and shall think fit to discharge again them or any of them respectively by any warrant or writing under our or our said heirs' hand and seal at arms from being of our or their council there any longer any thing herein contained to the contrary notwithstanding, provided nevertheless that every one of the said persons so to be nominated by the said William Stone to be of our council there as aforesaid shall respectively take in open court within our said province the same oath of a councillor to us and in the same manner as we have appointed to be taken by the rest of our council in our said province before he shall be admitted to be of our council there which oath shall be administered unto every such person by our secretary there for the time being unto whom we do by these presents give power and authority to administer the same accordingly.—Given under hand and great seal at arms at Bath the sixth day of August in the seventeenth year of our dominion over our province of Maryland *Annog: Dom. 1648.*"

Provided that the said William Stone or other governor take the oath of the lieutenant general.

Power to the governor to appoint supernumerary councillors.

Provided, such supernumerary councillors take the oath of a councillor.

"The Oath of the Lieutenant or Chief Governor of the Province of Maryland."

I, A B do swear that I will be true and faithful to the right hon'ble Cecilius lord baron of Baltimore the true and absolute lord and proprietary of this province of Maryland and his heirs and him and them and his and their rights royal jurisdiction and seignory all and every of them into and over the said province and islands thereunto belonging will at all times defend and maintain to the utmost of my power and will never accept of nor execute any place office or employment within the said province any way concerning or relating to the government of the said province from any person or authority but by from or under a lawful authority derived or to be derived from time to time under the hand and seal at arms of his said lordship or his heirs and assigns lords and proprietaries of the said province, I will faithfully serve his said lordship as his lieutenant of the said province and in all other offices committed to my charge by his said lordship's commission or commissions to me, and will willingly yield up the said commission and commissions again, and all offices powers and authorities granted or to be granted by them or any of them into the hands of his said lordship and his heirs and assigns or to such person or persons as he or they shall appoint when-

soever he or they shall appoint me so to do and shall signify the same unto me in any writing under his or their hand and seal at arms and will not presume to put in execution or attempt to execute any office power or authority granted unto me by any of the said commission or commissions after that his said lordship or his heirs or assigns lords and proprietaries of the said province shall repeal them or any of them respectively by any writing under his or their respective hand and seal at arms and that the said repeal be published within this province, I will do equal right and justice to the poor and to the rich within the said province to my best skill judgment and power according to the laws and ordinances of the said province and in default thereof according to my conscience and best discretion and the power granted or to be granted to me by his said lordship's commission or commissions, I will not for fear favour or affection or any other cause let hinder or delay justice to any but shall truly execute the said office and offices respectively according to his said lordship's commissions to me in that behalf and to the true intent and meaning thereof and not otherwise to the best of my understanding and judgment, I will not know of any attempt against his said lordship's person or his right or dominion into or over the said province and the people therein but I will prevent resist and oppose it with the utmost of my power and make the same known with all convenient speed to his said lordship, and I will in all things from time to time as occasion shall require faithfully counsel and advise his said lordship according to my heart and conscience, and do further swear that I will not by myself nor any person directly or indirectly trouble molest or discountenance any person whatsoever in the said province professing to believe in Jesus Christ and in particular no Roman Catholic for or in respect of his or her religion nor in his or her free exercise thereof within the said province so as they be not unfaithful to his said lordship or molest or conspire against the civil government established here under him, nor will I make any difference of persons in conferring of offices rewards or favours proceeding from the authority which his said lordship hath conferred upon me as his lieutenant here for or in respect of their said religion respectively but merely as I shall find them faithful and well deserving of his said lordship and to the best of my understanding endowed with moral virtues and abilities fitting for such rewards offices or favours wherein my prime aim and end from time to time shall sincerely be the advancement of his said lordship's service here and the public unity and good of the province without partiality to any or any other sinister end whatsoever, and if any other officer or person whatsoever shall during the time of my being his said lordship's lieutenant here without my consent or privy molest or disturb any person within this province professing to believe in Jesus Christ merely for or in respect of his or her religion or the free exercise thereof upon notice or complaint thereof made unto me I will apply my power and authority to relieve and protect any person so molested or troubled whereby he may have right done him for any damage which he shall suffer in that kind and to the utmost of my power will cause all and every such person or persons as shall molest or trouble any other person or persons in that manner to be punished, I will faithfully serve his lordship as his chancellor and keeper of his great seal of this province committed to my charge and custody by his said lordship's commission to me to the best of my skill and understanding, I will cause the impression in wax of the said seal to be affixed to all such things as I have or shall from time to time receive commission or warrant for so doing from his said lordship under his hand and seal at arms and that it shall not be affixed to any other writing or thing whatsoever directly or indirectly with my privy consent or knowledge, I will do my best endeavour lawfully to preserve the said great seal in my custody so long as it shall please his said lordship to continue me in the charge and keeping thereof to the end that it may not be lost stolen or

unlawfully taken from me and whereby any other person may affix the impression thereof unto any writing or thing whatsoever without authority for so doing lawfully derived or to be derived from by or under his said lordship's hand and seal at arms, and that I will truly and faithfully deliver up again the said great seal into the hands of such person or persons as his said lordship or his heirs shall appoint when his or their pleasure for that purpose shall be signified unto me under his or their hand and seal at arms, So help me God and by the contents of this book."

[Taken from the book entitled "Council Proceedings from 1636 to 1657," p. 168 and 181.]

NOTE (LXIII.) p. 337.

"Commission of the Council of State in Maryland.

Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., to our trusty and well beloved Thomas Greene esqr., captain John Price, Thomas Hatton our secretary, John Pile, and captain Robert Vaughan gent. greeting, Know ye, that we reposing special trust and confidence in your wisdoms, diligence, and experience, have assigned and appointed you jointly and every of you severally to be our privy council of state within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times until we or our heirs shall signify our or their pleasure to the contrary to assemble and meet together with our lieutenant or chief governor of our said province for the time being when and where he shall from time to time direct and appoint to treat consult deliberate and advise of all matters causes and things which shall be discovered unto you or be brought before you as well concerning the quiet government and regulating of the people there as for the good and safety of our said province of Maryland, and for the better and more peaceable government of our said province of Maryland we do hereby assign and appoint you and every of you until we or our heirs shall signify our or their pleasure to the contrary to be our justice and justices commissioner and commissioners for conservation of the peace within our said province of Maryland, and do hereby grant unto you and every of you in case any breach of peace shall happen within your any or either of your views or in case you shall be informed of any breach of the peace full power and authority to arrest or call before you by your warrant in our name to be directed to the sheriffs, constables, or other officers of counties, towns, villages, and other places within our said province of Maryland all and every the offender and offenders against our peace and if you see cause to bind over the offender or offenders with a good surety or sureties to appear before our lieutenant or chief governor and council there to answer the same and in the mean time to keep the peace or be of the good behaviour as the case shall require and in default of such surety or sureties to be by such offender or offenders tendered unto you to commit the offender or offenders to the common gaol or next prison within the said province as to you shall seem fit there to remain until they shall find good surety or sureties as aforesaid or until he or she or they shall be delivered by our lieutenant and chief governor and the council of our said province or the greater part of them whereof our lieutenant or chief governor for the time being to be one, and we do hereby further grant unto you and every of you full power and authority to attach arrest or by your warrants to cause to be arrested and attached in our name and to bring to due punishment any offender or offenders in weights or measures, all forestallors of markets, regrators, ingrossers, extortioners, rioters and other offenders against the publick welfare and peace of the province of Maryland, and we do hereby command all our sheriffs, officers, and ministers whatsoever that they and every of them be obedient unto our said councillors and commissioners and every of you in all

things as becometh, Provided always, that every one of you the said Thomas Greene, esqr., captain John Price, Thomas Hatton, John Pile, and Robert Vaughan nominated herein to be of our council of our said province do take the oath hereunto annexed entitled the oath of a councillor of state in Maryland before any of you respectively who shall not have taken the oath do presume to put in execution any of the powers and authorities hereby or by any other commission granted by us unto you as councillors or conservators of the peace in our said province or be admitted of our council there any thing herein or in any other commission of ours to the contrary notwithstanding which said oath shall be administered unto you and every of you respectively upon the holy evangelists by our lieutenant or chief governor of our said province for the time being whom we do hereby authorise and require to administer the same accordingly. Given under our hand and greater seal at arms the twelfth day of August in the 17th year of our dominion over our said province *annoq. domi.* 1648.

“The oath of a Councillor of State in Maryland.

I A. B. do swear that I will be true and faithful unto the right honble. Cecilius lord baron of Baltimore the true and absolute lord and proprietary of this province of Maryland and his heirs, and him or them and his and their rights, royal jurisdictions, and seignory all and every of them in to and over the said province and islands thereunto belonging will at all times defend and maintain to the utmost of my power and will never accept of nor execute any place office or employment within the said province any way concerning or relating to the government of our said province from any person or authority but by from or under a lawful authority derived or to be derived from time to time from his said lordship or his heirs lords and proprietaries of the said province under his or their hand and seal at arms, the peace and welfare of the people of this province I will ever procure as far as I can, I will aid and assist the administering and execution of justice in all things to my power, to none will I delay or deny right for fear favour or affection, I will to my best skill and according to my heart and conscience give good and faithful counsel to the said lord and proprietary and his heirs and to his and their lieutenant or chief governor of this province for the time being when thereunto I shall be called, I will keep secret all matters committed or revealed unto me or which shall be moved or debated secretly in council and faithfully declare my mind and opinion therein according to my heart and conscience and if any of the said treaties or councils shall touch any of the privy councillors of this province I will not reveal the same unto him so touched or concerned but will keep the same secret until such time as by consent of the lord proprietary or his lieutenant or chief governor here for the time being publication shall be made thereof, I will also as a councillor and as a justice and commissioner for conservation of the peace of this province do equal right unto the poor and to the rich to the best of my understanding and judgment according to the laws from time to time in force within this province and in default thereof according to my best discretion, and generally in all things will do as a faithful councillor to the said lord proprietor, and I do further swear that I will not by myself nor any other person directly or indirectly trouble, molest, or discountenance any person whatsoever in the said province professing to believe in Jesus Christ and in particular no Roman Catholick for or in respect of his or her religion nor in his or her free exercise thereof within the said province so as they be not unfaithful to his said lordship nor molest nor conspire against the civil government established here under him.—So help me God, and by the contents of this book.”

[Taken from “Council Proceedings from 1636 to 1657,” p. 199.]

NOTE (LXIV.) p. 338.

"Commission for Secretary in Maryland."

Cecilius absolute lord and proprietor, &c., Know ye that we reposing special trust and confidence in the wisdom diligence and fidelity of our trusty and well beloved Thomas Hatton gent. have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said Thomas Hatton to be our secretary of our said province of Maryland, and we do by these presents appoint constitute and ordain the said Thomas Hatton as well to be our principal officer and keeper of the acts and proceedings of us and of our lieutenant general and council there for the time being and of and for the entering and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland, and for the probates, entering and recording of wills and inventories, and granting of letters of administration, and for the entering and recording of all other matters acts and things which by any instructions laws or ordinances made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heirs or by the appointment of our lieutenant general or other chief governor there for the time being or otherwise to be entered and recorded to have and to hold execute and enjoy the said office and offices unto the said Thomas Hatton until we or our heirs shall signify our or their pleasure to the contrary and no longer. Given at Bath under our hand and seal at arms the twelfth day of August in the seventeenth year of our dominion over the said province. *Annoq. domi. 1648.*"

[Taken from "Council Proceedings from 1636 to 1657," p. 206.]

NOTE (LXV.) p. 338.

"Commission for the Great Seal."

Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c. to our trusty and well beloved lieutenant and council of our said province of Maryland to all the inhabitants of the same and all others whom it may concern, greeting, Whereas our great seal of the said province of Maryland was treacherously and violently taken away from thence by Richard Ingle or his complices in or about February *anno domini* one thousand six hundred and forty-four and hath been ever since so disposed of as it cannot be recovered again for us we do therefore hereby protest against all and every act and things whatsoever which hath been sealed therewith since the fourteenth of February *anno domini* one thousand six hundred forty and four or which shall at any time hereafter be sealed therewith as unlawful and not done by any legal authority from us and we do hereby declare all and every the said acts and things unlawful and null, but because it is necessary for the better government of our said province and satisfaction of the people there to have a seal of ours constantly remaining in the said province and appropriated thereunto and known to be our great seal of the same whereby divers public acts and grants of lands within the said province may be ratified and confirmed according to such directions, instructions, commissions, or warrants as we have or shall from time to time give under our hand and seal at arms for that purpose therefore we have provided another new seal for our said province in the room and place of the other which was so taken away from thence as aforesaid which new seal we have committed to the custody of captain William Stone whom we have constituted as well our chancellor and keeper of the same as our lieutenant of the said province till we or our heirs shall signify our pleasure to the contrary the manner and form of the said new seal being this (vizt.) On the one side thereof is engraven our figure in complete armour on horseback with our sword drawn and our helmet on and a great plume of feathers affixed to it, the horse trappings furniture and caparison being adorned with the figure of our paternal

coat of arms and underneath the horse a sea-shore engraven with certain flowers and grass growing upon it and this inscription about that side of the seal (vizt.) *Cecilius absolutus dominus Terra Mariæ et Avaloniæ Baro de Baltimore* and on the other or counter-side of the said seal is engraven a scutcheon wherein our paternal coat of arms to wit six peices impaled with a band dexter counterchanged quartered with another coat of arms belonging to our family vizt. a cross buttoned at each end (and also counterchanged) are engraven the whole scutcheon being supported with a fisherman on the one side and a plowman on the other standing upon a scrowl wherein is engraven the motto of our paternal coat of arms, vizt. *ffatti maschij parole Femini*, next above the scutcheon is engraven a count palatine's cap and over that a helmet with the crest of our paternal coat of arms on the top of it which crest is a ducal crown with two half bannerets set upright on it Behind the said scutcheon and supporters is engraven a large mantle and this inscription is about that side of the seal vizt. *Scuto bonæ Voluntatis tuæ coronastinos* the figure of the seal is round and it is of the same bigness that our former great seal was and cut in silver as the other was the impression of all which in wax is hereunto affixed it being somewhat different (though but little) from our said former great seal of the said province we do hereby declare the said new seal to be from henceforwards our great seal of the said province of Maryland and that we will have it so to be esteemed and reputed there till we or our heirs shall signify our or their pleasure to the contrary. Given at Bath under our hand and our said new great seal of the said province, the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. domi. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 201.]

NOTE (LXVI.) p. 339.

"Commission for Muster Master General.

Cecilius lord proprietor, &c., to our trusty and well beloved John Price, We considering that arms without the knowledge of the use of them are fruitless, and having an especial care of the safety and preservation of that our said province of Maryland have thought fit and necessary that the inhabitants thereof should be from time to time exercised and trained in the use of arms that so if occasion should require they may be the more ready and able to defend as well themselves as us and our rights there and offend their and our enemies, and we having had good experience of your knowledge and great abilities in martial affairs and of your great fidelity unto us in that occasion of the late insurrection and rebellion in our said province which was begun there by that notorious villain Richard Ingle and his complices against our dear brother Leonard Calvert esqr. deceased our late lieutenant of the same and therein against us and our undoubted rights and title there wherein and in divers other worthy actions you have manifested unto us and our colony there such singular fidelity courage wisdom industry and integrity as render you worthy and capable of the trust hereby intended by us to be reposed in you, wherefore We do by these presents constitute ordain and appoint you to be our muster master general of that our province of Maryland to have and to hold the said office of muster master general of our said province of Maryland with as ample fees vails regards profits commodities immunities and privileges as any muster master general of our said province hath or ought to have had in regard of his said office or as any muster master in Virginia of right now hath or enjoyeth or ought of right to have or enjoy by virtue of his said office till we or our heirs shall signify the contrary under our or their hand and seal at arms.—Given under our hand and greater seal at arms at Bath the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. domi. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 203.]

NOTE (LXVII.) p. 340.

"Commission for Commander of the Isle of Kent.

"Cecilius Lord Proprietor, &c. to our trusty and well-beloved Robert Vaughan gent. Whereas we have found you very faithful and well-deserving of us upon the occasion and insurrection and rebellion in our said province of Maryland begun and fomented by that notorious and ungrateful villain Richard Ingle and his complices against our dear brother Leonard Calvert esq'r. deceased our late governor of the said province and our undoubted right and title to the government of the same wherein you have manifested to the satisfaction of us and our colony there such fidelity courage wisdom industry and integrity as render you capable and worthy of the trust hereby by us intended to be reposed in you, wherefore we do by these presents authorise constitute and appoint you to be commander of the island of Kent within our said province and the inhabitants thereof and also grant unto you all such fees perquisites and profits as are belonging to the said place and office of commander of the said island to have and to hold the said place and office and fees perquisites and profits aforesaid till we or our heirs shall signify our or their pleasure to the contrary under our or their hand and seal at arms, and we do further grant hereby unto you full power and authority to elect and choose any six or more able and sufficient men inhabitants of the said island as you in your discretion shall think fit with whom you shall advise and consult in all matters of importance whom we do appoint shall be authorised commissioners for that purpose under the great seal of our said province and to call a court or courts as often as there shall be cause and in the said courts to award in our name all manner of process hold pleas and finally to hear and determine all causes and actions whatsoever civil happening and arising between any the inhabitants of the said island not exceeding in damage or demand the value of ten pounds sterling as also to hear and finally to determine all matters and offences whatsoever criminal happening and committed within the said island which may be heard and determined by any justice of the peace in England in their courts of session not extending to life or member, and we do further authorise you to do use and execute all and all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said island as any justice of peace in England may or ought to do by virtue of his commission for the peace and further to elect and appoint all necessary officers for the execution of justice and conservation of the peace there with allowance of such fees as are usually belonging to the same or the like officers in Virginia and to do all other things and acts which shall be necessary for the execution of the power and jurisdiction hereby committed unto you.—Given under our hand and greater seal at arms at Bath the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. Dom. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 205.]

(NOTE (LXVIII.) p. 340.

"Commission to the Governor and Council in Maryland, [accompanied with certain Laws to be passed by the Assembly.]

Cecilius absolute lord and proprietor of the provinces of Maryland and Avalon lord baron of Baltimore, &c. to our trusty and well beloved William Stone esqr. our lieutenant of our said province of Maryland and to all our councillors and to our freemen or their deputies in our general assembly within that province, greeting, Whereas we are informed that divers laws were enacted in our said province in our name by captain Edward Hill with the consent of our freemen or their deputies or the major part of them concerned in one or more general assemblies there in the time when he the said capt. Hill was our pretended lieu-

tenant or governor of the said province although the said captain Hill had never any lawful authority to act any thing there as our lieutenant or chief governor of that province nor for acting any thing else concerning that government in regard our dear brother Leonard Calvert esq. (lately deceased) by whom the said capt. Hill pretended to be constituted our lieutenant there had no authority from us to appoint or constitute any in that place under us there but only in case of his death or of his absence from thence and during such absence only or until we or our heirs should signify our or their pleasure to the contrary and was also limited by our commission to him not to appoint or constitute any person in either of the aforesaid cases of death or absence to be our lieutenant or governor there unless such person were of our privy council there and residing within our said province at the time of such appointment or constitution which made the said captain Hill incapable of that place he being not then nor ever of our said council, and whereas we are informed that some of those laws so enacted as aforesaid are very prejudicial to our rights and royal jurisdictions in the said province and others of them inconvenient for our people there we do therefore for the reasons aforesaid hereby protest against all the said captain Edward Hill's proceedings in the quality of our lieutenant there as unlawful, and do hereby declare our dissent to all laws orders and ordinances whatsoever made or enacted by him or in our name as our lieutenant there in any general assembly or otherwise, and whereas we are informed that there have been at several times divers other laws enacted in our said province both before and after captain Hill's assumption and desertion of that pretended place of our lieutenant there by several others of our lawful lieutenants of the said province for the time being in our name to and with the consent and approbation of the freemen of our said province or their deputies or the major part of them which have been since found as we are informed too burthensome and inconvenient for the people there we therefore tendering their good more than our own have seriously considered of certain acts or laws hereunto annexed being sixteen in number and written in three sheets of parchment each sheet being signed by us and all three jointly together with these presents having the impression of our greater seal at arms affixed unto them which said acts or laws were proposed unto us for the good and quiet settlement of our colony and people in our said province and we finding them very fit to be enacted as laws there do hereby consent that our said lieutenant William Stone shall propose the said acts or laws hereunto annexed as aforesaid to a general assembly or assemblies of the freemen of our said province or their deputies and in case the said freemen or their deputies or the major part of them in any such general assembly within our said province shall within twelve months after the date hereof give their consent that all and every of the said acts or laws jointly contained in the said three sheets of parchment hereunto annexed shall be enacted for laws within our said province by us or our lieutenant there for the time being in our name in such manner and form as they are there written or drawn without any alteration addition or diminution to them or any of them, We do in that case and not otherwise hereby declare our assent also, that all and every of the said acts and laws may and shall be enacted, and we do in that case and not otherwise hereby enact them for laws within our said province and do also in that case and not otherwise declare our dissent to all and every law or laws which have been at any time heretofore enacted or shall be enacted for laws or ordinances in our name or otherwise within that our said [province] before the publishing of our commission there for the making and constituting of the said William Stone our lieutenant of our said province excepting nevertheless any act or acts law or laws whereby William Clayborne now or late of Virginia was or is by that or any other name attainted or condemned of any capital or other crime or crimes or misdemeanors all and every of which act or acts law or laws

concerning any such attainder or condemnation of the said William Claybourne we will have still to continue in full force and virtue any thing herein to the contrary in any wise notwithstanding.—Given under our hand and greater seal at arms at Bath the 12th day of August in the seventeenth year of our dominion over the said province *Anno Domini*. 1648.”

[From “Council Proceedings from 1636 to 1657,” p. 209.]

NOTE (LXIX.) p. 342.

“*A Commission annexed to the Conditions of Plantation, Anno 1648.*

“Cecilius, &c. to our trusty and well beloved William Stone esquire, our lieutenant of our province of Maryland, greeting, Whereas we have thought fit for divers reasons to revoke our former conditions of plantation for our said province of Maryland and to propose other conditions of plantation for the future within the said province which we send you herewith written in parchment under our hand and greater seal at arms bearing date the twentieth day of June last past and hereunto annexed, and whereas we have likewise herewith sent you certain draughts or forms of grants the one of a manor and the other of a freehold under our hand and greater seal at arms bearing date with these presents, and have hereunto also annexed, which forms we would have observed and no other, *mutatis mutandis et repletis replendis*, in the granting of lands within the said province for the future by virtue of the said last conditions of plantation bearing date as aforesaid or by virtue of any other warrant hereafter under our hand and seal at arms for granting of lands there excepting where we shall by any such warrant give directions to the contrary. We do therefore declare hereby that we have and do hereby revoke from henceforward all former conditions of plantation for our said province of Maryland heretofore proposed by us so as we will not have any land in our said province hereafter granted from us to any person whatsoever by virtue of any of the said former conditions of plantation for or in respect of the transportation of any person or persons whatsoever into our said province from and after the date hereof, and we do will and require you to publish this our declaration in our said province with all convenient speed to the end that all those whom it may concern may take notice thereof, and we do hereby authorise and require you till we or our heirs shall signify our or their pleasure to the contrary from time to time in our name and under our great seal of our said province to grant lands within our said province to all adventurers or planters to or within the same upon such terms and conditions as are expressed in the last conditions of plantation and according to the form of grants above mentioned and no otherwise without further and special warrant hereafter to be obtained for the same under our or our heirs hand and seal at arms: And whereas we are given to understand that as well divers Frenchmen as some people of other nations who by our former and also by these last conditions of plantation are not capable of having any lands within our said province are already seated or may hereafter with ours or you our lieutenant’s leave there for the time being seat themselves in our said province We do hereby therefore authorise you to make any person or persons of French, Dutch, or Italian descent as you shall think fit and who are already planted or shall hereafter come and plant in our said province capable of our said last conditions of plantation and do hereby give you power to grant lands thereupon within our said province unto them and every of them accordingly as well for and in respect of themselves as for and in respect of any person or persons either of British or Irish or of any other of the descents aforesaid which they or any of them and also which any other person of British or Irish descent shall hereafter with our or you our said lieutenant’s leave transport into our said province in the same and in as ample manner and upon the same terms and provisoes as you are

hereby or by our commission to you for the government of the said province authorised to grant any lands to any adventurer or planter of British or Irish descent within our said province, *Provided always* the demesnes of no mannor within our said province which already is or shall be hereafter set out and appointed for our own particular use nor any part of our mannor of West St. Mary's lying upon or near St. George's river in our said province nor any other land within our said province which hath been or shall hereafter be granted to any other person or persons from us and is or shall be confiscated or escheated again unto us or our heirs shall be alienated or granted from us or our heirs by virtue hereof without our further and special warrant for the same to be hereafter obtained under the hand and seal at arms of us or our heirs any thing herein to the contrary notwithstanding.—Given at Bath under our hand and greater seal at arms the twentieth day of August *Anno Domini* 1648.

Conditions propounded by the Right Hon'ble Cecilius Lord Baron of Baltimore Lord and Proprietary of the Province of Maryland, &c., to such persons as shall go to plant in the province aforesaid which conditions are to continue in force till other conditions of plantation for the said province shall be published under his lordship or his heirs hand and seal at arms within the said province.

What persons soever being of British or Irish descent (except hereafter excepted) shall at his own or friends charge cause to be transported into the province of Maryland from any other place himself or his deputy with any number of persons of the descent aforesaid and shall observe the conditions hereunder mentioned there shall be granted unto every such adventurer or planter for every twenty persons of the descent aforesaid which he shall so in any one year at his own or his friends charge cause to be transported from any other place thither a proportion of good land within the said province containing in quantity two thousand acres of English measure to be assigned and to lye all together in some one place within the said province every which said two thousand acres shall be erected into a manor and be conveyed by grant under the great seal of the said province to him his heirs and assigns respectively for ever with such royalties and priviledges as are most usually belonging unto manors in England to be held by some honour of his said lordship or his heirs within his said province in eveage tenure rendering and paying yearly for the first seven years after the said grant unto his said lordship and his heirs for every such manor at the two most usual feasts of the year (*viz.*) the Annunciation of the Blessed Virgin Mary and St. Michael the Archangell by even and eaqull portions of the rent of forty shillings sterling in silver or gold or the value thereof in such commodities as his said lordship and his heirs or his or their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof forty bushell of wheat yearly as is now usually growing and used in England and according to English measure or six pounds sterling in silver or gold at the choice of his lordship and his heirs and after the said fourteen years in lieu thereof the twentieth part yearly of the annual yield and profits of such manor or in lieu thereof ten pounds sterling in silver or gold at the choice as aforesaid of his said lordship and his heirs for ever.

2. The sixth part of the land of every manor which shall be granted by virtue of the said conditions shall be for ever after accompted and known for the demesnes of every of the said manors respectively which demesnes shall be set forth in some one convenient place altogether within every such manor by distinct meetes and bounds for that purpose and shall never be alienated separated or leased from the royalties and lord or lords of the said respective manors from time to time for the time being for any number of years or other term exceeding seven years and the respective lords of every such manor and their heirs shall

have power from time to time and at all times hereafter to grant or convey any other part of the said mannor respectively (except the demesne land of the same) unto any other person or persons of British or Irish descent either in fee simple or fee-tayle for life lives or years to hold of him or them as of his or their said mannor respectively by and under such rents and services as he and they shall think fit not prejudicial to his lordship's royal jurisdiction there and so as all and every part of the said lands so to be granted or conveyed as aforesaid remain notwithstanding still subject and liable to the payment of such rents dues and services of every such mannor as are or shall be from time to time reserved upon the original grant thereof from his said lordship and payable to his said lordship and his heirs for ever.

3. What person soever of the descent aforesaid (except hereafter excepted) shall at his or his friend's charges cause to be transported any less or greater number of persons than twenty of the descent aforesaid into the said province from any other place and shall also observe the conditions hereunder mentioned he shall have granted unto him his heirs and assigns respectively under the great seal of the said province for and in respect of himself and every such person as aforesaid fifty acres of good land lying together in one place within the said province to be holden of some mannor there of his lordship's and his heirs in socage tenure rendering and paying yearly for every fifty acres to his said lordship and his heirs for the first seven years after the grant thereof the rent of one shilling sterling in silver yearly at the two most usual feasts of the year (viz) at the Annunciation of the Blessed Virgin and St. Michael the Archangel by even and equal portions or the value thereof in such commodities as his said lordship and his heirs or his and their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof one bushel of such good wheat as is now usually growing and used in England or three shillings sterling in silver at the feast aforesaid by even and equal portions yearly at the choice from time to time of his said lordship and his heirs or his or their officer or officers who shall be authorised by him or them from time to time to collect or receive the same and after the said fourteen years in lieu thereof the twentieth part of the annual yield and profits of every the said fifty acres yearly or in lieu thereof twenty shillings sterling in silver or gold yearly at the feast aforesaid and at the choice aforesaid to his said lordship and his heirs for ever.

4. Every adventurer or planter his heirs and assigns shall cause so many persons of British or Irish descent from time to time to reside or inhabit upon the land granted to him or them in the said province as are required by the said conditions to be transported thither for the granting of the said land and in default thereof at any time upon a warning given unto him or them by such officers of his said lordship or his heirs as shall from time to time be appointed for that purpose for supply of the same such adventurer or planter and his heirs and assigns shall within one year after such warning given supply the number of persons that shall be so wanting to reside and inhabit upon the same or in default thereof to pay unto his said lordship and his heirs two bushels of good wheat yearly such as usually grows in England for default of every such person so wanting till such adventurer or planter and his heirs and assigns shall comply with this article of these conditions according to the true intent thereof and if the said default continue for three years together then for every man that shall be so wanting as aforesaid to inhabit and reside upon the said land it shall be lawful for his said lordship and his heirs to seize upon fifty acres of the said land whereupon there shall be at the time of such seizure no person of British or Irish descent then residing or inhabiting and let the same to any other person for any term not exceeding three lives or one and twenty years upon such terms and

conditions and under such rents and services as his said lordship and his heirs shall think fit paying such adventurer or planter and his heirs and assigns a tenth part of the rent that shall be paid by any such lessee for the same over and above the quit-rent to his said lordship and his heirs reserved upon the originall grant which shall be first deducted and payed.

5. Every man servant of British or Irish descent that shall be transported into the said province at the cost and charges of any other person or persons whatsoever of the same descent shall at the expiration of the time of their service so as it be not under three years after their arrival there be accompted a planter within the said province and shall have so much land granted unto him his heirs and assigns there from his said lordship and his heirs and upon such terms and conditions as if such servant had transported himself into the said province at his own proper cost and charges.

6. It is not intended that any such adventurer or planter shall have any land granted unto him or them for any person for or in respect of whom any land in the said province at the time of such grant hath been formerly granted by his said lordship.

7. Every adventurer or planter that shall have any land granted unto him by virtue of these conditions, before any grant be delivered to him and before it shall enure to his benefit shall take within the said province the oath of fidelity to his lordship and his heirs lord and proprietaries of the said province hereunto specified.

8thly. Every adventurer or planter that shall have any lands by virtue of these conditions shall pay such fees to his lordship's officers within the said province for their respective grants of the said land as are or have been usually paid to the like officers in Virginia for the like grants in that colony or as have been paid for the like in Maryland or as is or shall be appointed by act of a general assembly there, so as they be not less than the said fees usually paid in Virginia or which have been paid for the like in Maryland.

9. Every adventurer or planter shall have all such lands as shall become due unto him by virtue of the said conditions assigned unto him in such parts or places of the said province as his lordship or his heirs or his or their lieutenant or other chief governor there together with his lordship's secretary and surveyor general there for the time being shall from time to time appoint for the general good of his lordship's colony there and the reasonable convenience and commodity of every such adventurer or planter.

10. His lordship doth except out of these conditions of plantation all corporations societies fraternities guilds and bodys politick, as well spiritual as temporal, and every of them, and doth declare that he doth not intend that they or any of them shall be capable of or have any benefit by virtue of those conditions to inherit possess or enjoy any land within the said province, either in their own name or right or in the name or names or right of any other person or persons whatsoever to the use interest or benefit of any such corporation, guild, bodys politick, societies, fraternities, or any of them as aforesaid without further particular and special licence first had and obtained therefor under his lordship's hand and seal at arms.

11. In case his lordship shall think fit to except any other person or persons from having any land within the said province by virtue of these conditions, and shall cause notice to be given to such person or persons of such exception; such person and persons so to be excepted by his lordship shall not from and after six months next ensuing after such notice given as aforesaid have any future benefit to be capable of having any land within the said province by virtue of the said conditions for or in respect of any person or persons which shall be afterwards transported into the said province without further special licence under his lordship's hand and seal at arms for the same.

12. No adventurer or planter to or in the said province or any of them, who shall have any land due unto them him or her there by virtue of the said conditions nor their heirs or assigns shall give grant sell aliene or assign any of those lands tenements hereditaments within the said province which shall be assigned or granted unto him or them from his said lordship or his heirs, or which such adventurer or planter or any of them shall possess and enjoy by virtue of the said conditions to any corporation society fraternity guild or body polittick, either spiritual or temporal, or to any other person or persons whatsoever in trust for them or any of them or to such use or uses or any use or uses comprized mentioned or forbidden in any of the statutes of Mortmayne heretofore made in the kingdom of England at any time before the reign of Henry VIII. who was king of that realm without particular or special licence first had and obtained for that purpose under the hand and seal at arms of his lordship or his heirs upon pain or forfeiture of all such lands unto his lordship and his heirs.

13. Every person whatsoever as shall claim any proportion of land in the said province of Maryland by virtue of the said conditions shall demand of his lordship or his heirs or of his or their lieutenant or chief governor of the said province for that time being a grant under the great seal of the said province of the said lands so due to him within one whole year next after the said lands shall be due unto him; and if any adventurer or planter shall neglect to make the said demand within the time above mentioned or that he or his heirs or assigns shall refuse at any time to accept of a grant from his lordship or his heirs under the great seal of the said province of such lands as shall from time to time be due unto any such adventurer or planter by virtue of the said conditions when it shall be offered unto him or them by his said lordship or his heirs or by his or their lieutenant or chief governor there or by his or their secretary within the said province for the time being, or shall not perform all things which are required by the said conditions to be performed by every such adventurer or planter, then every such adventurer shall for ever after loose their respective rights and pretences to the said land.

14. Because all secret trusts are usually intended to deceive either the government or state where they are made or some other persons and by experience are found to occasion many suits and dissensions, therefore no adventurer or planter shall take any grant from his lordship under the great seal of the province of any lands there by virtue of these conditions in trust for any other person or persons or to any other use or uses than what shall be expressed in the said several and respective grants upon pain of forfeiture of the said lands to his lordship or his heirs when any such secret trust or uses shall be truly discovered.

The oath of Fidelity to the Lord Proprietary, [referred to in the seventh clause of the preceding conditions.]

I A. B. do faithfully and truly acknowledge the right honble. Cecilius lord baron of Baltimore to be the true and absolute lord and proprietary of this province and country of Maryland and the islands thereunto belonging and I do swear that I will bear true faith unto his lordship and to his heirs as to the true and absolute lords and proprietaries of the said province and islands thereunto belonging and will not at any time by words or actions in publick or in private wittingly or willingly to the best of my understanding any way derogate from but will at all times as occasion shall require to the utmost of my power defend and maintain all such his said lordship's and his heir's right title interest privilege, royal jurisdiction, prerogative proprietary and dominion over and in the said province of Maryland and islands thereunto belonging and over the people who are and shall be therein for the time being as are granted or mentioned to be granted to his said lordship and his heirs by the king of England in his said lordship's patent of the said province under the great seal of England. I do

also swear that I will with all expedition discover to his said lordship or to his lieutenant or other chief governor of the said province for the time being, and also use my best endeavours to prevent any plot conspiracy or combination which I shall know or have cause to suspect is or shall be intended against the person of his said lordship or which shall tend any ways to the disinherison or deprivation of his said lordship's or his said heir's their right title royal jurisdiction and dominion aforesaid or any part thereof, and I do swear that I will not either by myself or by any other person or persons directly or indirectly take accept receive purchase or possess any lands tenements or hereditaments within the said province of Maryland or the islands thereunto belonging from any Indian or Indians to any other use or uses but to the use of his said lordship and his heirs or knowingly from any other person or persons not deriving a legal title thereunto by from or under some grant from his said lordship or his said heirs legally passed or to be passed under his or their great seal of the said province for the time being. So help me God, and by the contents of this book.—Given at Bath under his lordship's hand and greater seal at arms the 20th day of June, 1648.

[The foregoing commission, conditions, and oath were taken from the book entitled "Council Proceedings from 1636 to 1657," p. 185, and p. 196.]

NOTE (LXX.) p. 344.

[PROCLAMATION.] "Novembr. 11th, 1648.

By the Governor of Maryland.

These are to give notice to all persons to whom it may concern that I do hereby (for special reasons me thereunto moving) suspend and revoke all power and authority of command upon the isle of Kent from capt. Robert Vaughan the commander of the said island and do acquit and discharge all the inhabitants of the said island from their obedience formerly due unto his command until they shall be thereunto required again by special commission from the governor of this province for the time being, and I do further hereby require and authorize Mr. Philip Conner one of the commissioners of the said county of Kent to issue forth all writs and processes necessary for the administration of justice in the said county, binding all parties interested over to the provincial court at St. Mary's there to have tried and determined their suits and causes until further order shall be taken therein, finding it necessary for the present to suspend all further power of judicature upon the said island.—Given at Saint Mary's this 11th Novembr., 1648.

THOS. GREENE.

[COMMISSION TO HENRY MORGAN.]

"By the Governor of Maryland.

Relying upon your faithfulness and courage I do hereby commit unto you and add unto your office of high sheriff of the county of Kent the command of all the militia of the said county, requiring you to take charge thereof and upon any invasion from abroad or mutiny insolence or other breach of peace at home or endangering the publick safety of your county to encounter and suppress the same in the best and speediest manner you may, and to raise and levy the force of the said county to that purpose, or any part thereof as there shall be cause, and I do hereby require all persons able to bear arms within the said county to be obedient unto you upon such pains and perils as the offence against military discipline shall deserve by the law of arms or censure of the provincial court. Given at Saint Mary's this 11th qber, 1648.

THOS. GREENE.

To Mr. Henry Morgan, high sheriff of Kent county.

[The following document appears as an entry in the proceedings of the provincial court.]

"Decembr. 9th, 1648. This day came capt. Robert Vaughan and humbly petitioneth the governor to withdraw his action against him and acknowledgeth

before the said governor and other parties present to have divers times reviled the said governor with scandalous and upbraiding speeches upon the isle of Kent where he bore the command, as also to have sundry times in his discourse upon the said isle taxed the said governor with partiality of justice, which said fact he confesseth to be foul and rashly done by him and altogether false, and withal humbly requireth forgiveness for such his said misdemeanor therein, expressing sorrow therefor with purpose of amendment, and desireth that he may not be brought to be censured as such his faults in this kind deserve.

Whereupon the governor withdrew his action and pardoned the offence."

[PROCLAMATION FOR REINSTATING CAPT. VAUGHAN.]

"By the Governor and General of Maryland.

Whereas a proclamation was sent up to the inhabitants of the isle of Kent bearing date at St. Mary's, 11th Novembr. to suspend and revoke all power and authority of command upon the said isle of Kent from captain Robert Vaughan commander of the said island, wherein also the inhabitants upon the said isle were acquitted and discharged from their obedience due unto him by virtue of his command until they should be thereunto again required by special commission from the governor of this province for the time being, which said proclamation, as I am given to understand, hath been published according to my order upon the said island, and now since finding it needful and convenient to continue the said suspension no longer upon the said island I do hereby give notice to all persons whom it may concern that I do again nominate and appoint him the said captain Robert Vaughan to be chief captain and commander of the said isle of Kent under me his lordship's governor and to exercise all power and authority upon the said island according to his former commission granted unto him from Leonard Calvert esqr., late governor bearing date at Kent 8th April, 1647, and do again hereby require the obedience of all people upon the said island to the command of him the said captain Robert Vaughan as fully and absolutely as if no such revocation or suspension had been made of his command before, And further for special reasons me thereunto moving I do hereby suspend all power and authority from all the assistants or commissioners joined with the said capt. Robert Vaughan in the aforesaid commission (Mr. Philip Conner only excepted) and in their rooms do constitute and appoint Mr. Nicholas Brown to be assistant or commissioner authorizing them the said capt. Robert Vaughan Mr. Philip Conner and Mr. Nicholas Brown to hear and determine all causes upon the said island according to the commission afore mentioned requiring all the inhabitants aforesaid to acknowledge and obey the said captain Robert Vaughan Mr. Philip Conner and Mr. Nicholas Brown in the several commands and authorities thereby committed to them as they will answer the contrary at their perills.—Given at St. Mary's this 11th Decembr. 1648.

THOS. GREENE."

[The preceding documents of this note are taken from "Council Proceedings from 1636 to 1657," p. 214 to 217.]

NOTE (LXXI.) p. 351.

"An act concerning Religion.

"Forasmuch as in a well governed and christian commonwealth matters concerning religion and the honour of God ought in the first place to bee taken into serious consideration and indeavoured to be settled, Bee it therefore ordayned and enacted by the right honourable Cecilius lord baron of Baltimore, absolute lord and proprietary of this province, with the advice and consent of the upper and lower house of this general assembly, that whatsoever person or persons within this province and the islands thereunto belonging, shall from henceforth blas-

pheame God, that is, curse him, or shall deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son, and Holy Ghost, or the Godhead of any of the sayd Three Persons of the Trinity, or the Unity of the Godhead, or shall use or utter any reproachfull speeches, words, or language, concerning the Holy Trinity, or any of the sayd three persons thereof, shall be punished with death, and confiscation or forfeiture of all his or her land and goods to the lord proprietary and his heires.

And bee it also enacted by the authority and with the advice and assent aforesaid, That whatsoever person or persons shall from henceforth use or utter any reproachfull words or speeches concerning the blessed Virgin *Mary*, the mother of our Saviour, or the holy Apostles or Evangelists, or any of them, shall in such case for the first offence forfeit to the sayd lord proprietary and his heires lords and proprietaries of this province, the sum of 5*l.* sterling, or the value thereof, to bee levied on the goods and chattels of every such person so offending; but in case such offender or offenders shall not then have goods and chattels sufficient for the satisfying of such forfeiture, or that the same be not otherwise speedily satisfied, that then such offender or offenders shall be publicly whipt, and be imprisoned during the pleasure of the lord proprietary or the lieutenant or chiefe governour of this province for the time being; and that every such offender and offenders for every second offence shall forfeit 10*l.* sterling, or the value thereof to be levied as aforesayd, or in case such offender or offenders shall not then have goods and chattels within this province sufficient for that purpose, then to be publicly and severely whipt and imprisoned as before is expressed; and that every person or persons before mentioned offending herein the third time, shall for such third offence forfeit all his lands and goods and be for ever banisht and expelled out of this province.

And be it also further enacted by the same authority, advice and assent, that whatsoever person or persons shall from henceforth upon any occasion of offence or otherwise in a reproachful manner or way, declare, call, or denominate any person or persons whatsoever inhabiting, residing, trafficking, trading, or commercing, within this province or within any the ports, harbours, creeks, or havens to the same belonging, an Heretick, Schismatick, Idolator, Puritan, Presbyterean, Independent, Popish Priest, Jesuit, Jesuited Papist, Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or other name or terme in a reproachful manner, relating to matter of religion, shall for every such offence forfeit and lose the sum of 10*s.* sterling or the value thereof to be levied on the goods and chattels of every such offender and offenders, the one halfe thereof to be forfeited and paid unto the person or persons of whom such reproachful words are or shall be spoken or uttered, and the other halfe thereof to the lord proprietary and his heirs lords and proprietaries of this province; but if such person or persons, who shall at any time utter or speak any such reproachful words or language, shall not have goods or chattels sufficient and overt within this province to be taken to satisfy the penalty aforesayd, or that the same bee not otherwise speedily satisfied, that then the person or persons so offending shall be publicly whipt and shall suffer imprisonment without bayle or mainprise until he, she, or they respectively shall satisfie the party offended or grieved by such reproachful language, by asking him or her respectively forgiveness publicly for such his offence before the magistrate or chiefe officer or officers of the towne or place where such offence shall be given.

And be it further likewise enacted by the authority and consent aforesayd, that every person and persons, within this province, that shall at any time hereafter prophane the Sabaath or Lord's day called Sunday, by frequent swearing, drunkenness, or by any uncivill or disorderly recreation, or by working on that day, when absolute necessity doth not require, shall for every such first offence forfeit

2s. 6d. sterling or the value thereof; and for the second offence 5s. sterling or the value thereof; and for the third offence and for every time he shall offend in like manner afterwards 10s. sterling or the value thereof; and in case such offender or offenders shall not have sufficient goods or chattells within this province to satisfie any of the aforesayd penalties respectively hereby imposed for prophaning the sabaath or Lord's day called Sunday as aforesaid, then in every such case the party so offending shall for the first and second offence in that kind be imprisoned till hee or she shall publickly in open court before the chief commander, judge, or magistrate of that county, towne, or precinct wherein such offence shall be committed, acknowledge the scandall and offence hee hath in that respect given against God, and the good and civil government of this province; and for the third offence and for every time after shall also be publickly whipt.

And whereas the inforcing of the conscience in matters of religion hath frequently fallen out to bee of dangerous consequence in those commonwealths where it hath beene practised, and for the more quiet and peaceable government of this province, and the better to preserve mutuall love and unity amongst the inhabitants here, Bee it therefore also by the lord proprietary with the advice and assent of this assembly ordained and enacted, except as in this present act is before declared and set forth, that no person or persons whatsoever within this province or the islands, ports, harbours, creeks, or havens thereunto belonging, professing to believe in Jesus Christ, shall from henceforth be any waies troubled, molested, or discountenanced, for or in respect of his or her religion, nor in the free exercise thereof within this province or the islands thereunto belonging; nor any way compelled to the beleefe or exercise of any other religion against his or her consent, so as they be not unfaithfull to the lord proprietary, or molest or conspire against the civill government, established or to be established in this province under him and his heyres; and that all and every person or persons that shall presume contrary to this act and the true intent and meaning thereof, directly or indirectly, eyther in person or estate, wilfully to wrong, disturb, or trouble, or molest any person or persons whatsoever within this province, professing to believe in Jesus Christ, for or in respect of his or her religion, or the free exercise thereof within this province, otherwise than is provided for in this act, that such person or persons so offending shall be compelled to pay treble damages to the party so wronged or molested, and for every such offence shall also forfeit 20s. sterling in money or the value thereof, half thereof for the use of the lord proprietary and his heires lords and proprietaries of this province, and the other halfe thereof for the use of the partie so wronged or molested as aforesaid; or if the party so offending as aforesaid, shall refuse or bee unable to recompence the party so wronged or to satisfie such fine or forfeiture, then such offender shall be severely punished by publick whipping and imprisonment during the pleasure of the lord proprietary or his lieutenant or chiefe governour of this province for the time being, without baile or mainprise.

And be it further also enacted by the authority and consent aforesayd, that the sheriffe or other officer or officers from time to time to be appointed and authorised for that purpose of the county, town, or precinct where every particular offence, in this present act contained, shall happen at any time to be committed and whereupon there is heereby a forfeiture, fine, or penalty imposed, shall from time to time distrain, and seise the goods and estate of every such person so offending as aforesayd against this present act or any part thereof and sell the same or any part thereof for the full satisfaction of such forfeiture, fine, or penalty as aforesayd, restoring to the party so offending the remainder or overplus of the sayd goods and estate after such satisfaction so made as aforesayd.

[The foregoing act is recorded in *Lib. C.* and *WH.* p. 106;—*Lib. WH.* p. 111,

and *Lib.* WH. and L. p. 1,—books in the office of the present Court of Appeals, and also in the book entitled “Assembly Proceedings from 1637 to 1658,” p. 354, in the council chamber.]

NOTE (LXXII.) p. 365.

“An order of assembly for the defence of the province as the present times will permit.”

For the more safety and better securing of this province against the Indian enemy this present year, it is ordered, by the authority of this present general assembly, that through the whole province it shall be lawful for the freemen in every hundred to assemble themselves together at some place to be nominated within their hundred by the commander or other officer in each hundred as shall be nominated appointed and authorised by the governor for the time being with commission for that purpose on the three last days of the months of April, May, June, July, August, and September next following and then and there by the major voice of the freemen present to propose and conclude of such orders and ordinances as they shall judge meet and necessary for the defence of each particular hundred for the month next following and then and there by the so concluded on [orders] by the freemen then present and assembled as aforesaid the commander and other officer shall see them put in execution, provided that if any one suffer loss by houseing or other goods and chattels by means of any such order or obeying such order as shall be prescribed and concluded upon at such meeting that it shall be made good by levy to be made upon the hundred by the sheriff, which levy shall be assessed by three able persons to be chosen by the governor for the time being for that purpose out of some other hundred and not out of that hundred wherein such reparation is to be made, and because it is generally thought fit that the best and speediest way of preservation of the province may be by way of rounding, it is ordered, by the authority aforesaid, that five guns or more shall be taken from such rounders for a general and true alarm to all the inhabitants through the whole province, any three guns or more from any inhabitants shall be taken for a true alarm in like manner, and every master of a house and family neglecting with three guns to answer such alarm (after proof made that he heard the same) shall be fined to the lord proprietary 100 lb. tob'o. and cask for every such neglect, and any one causing or making a false alarm upon just proof made shall be fined to the lord proprietary for every such offence 100 lb. casked tobacco as aforesaid, and it is further ordered, that no inhabitant able to bear arms shall go out of the limits of the plantation where he is usually resident either to church or upon any other occasion whatsoever without his arms well fixed and a sufficient quantity of powder and shot about him, and every offender herein shall for every such offence be punished as the commander of the hundred where such offence shall happen to be committed shall in his discretion think fit for the nature of the offence considered not extending to life or member, and it is also further ordered, that every master of a family shall provide for himself sufficient arms and ammunition, and for every hired servant or other sojourner also residing and dwelling in his house this year, viz't. one fixed gun, 2 lb. of powder, and eight pound of shott pr. head, with gun and ammunition by virtue of this order every such master as aforesaid may bring the same to accompt and recover the same upon every such sojourner and if hired servant every such master may accompt or deduct the same out of the wages of every such hired servant if he be not already provided herewith as aforesaid, and every master of a family that shall be found defective herein shall be punished according to the discretion of the commander of that hundred where such master of a family dwelleth and as the nature of the offence shall require not extending to life or member.

The freemen have assented—THOS. HATTON.

Concurred by the governor—WILLM. STONE.”

[Taken from “Assembly Proceedings from 1637 to 1658,” p. 370.]

NOTE (LXXIII.) p. 367.

The Assembly's letter to Lord Baltimore.

*Saturday the 21st of April, 1649, being the last day and sessions-day of the assembly, a letter was read to be sent to his lordship, and signed by the whole house present.—The governor dissolved the house.

A letter sent to his lordship from the assembly held at Saint Mary's in April *Anno. dom. 1649.*

Right Hon'ble.—Great and many have been the miseries calamities and other sufferings which your poor distressed people inhabitants of this province have sustained and undergone here since the beginning of the heinous rebellion first put in practice by that pirate Ingle and afterwards almost for two years continued by his complices and confederates in which time most of your lordship's loyal friends here were spoiled of their whole estate and sent away as banished persons out of the province those few that remained were plundered and deprived in a manner of all livelyhood and subsistence only breathing under that intolerable yoke which they were forced to bear under those rebels which then assumed the govt. of your lordship's province unto themselves ever endeavouring by oaths and what other inventions and practices they might to withdraw the ears and affections of the inhabitants here from their wonted obedience to to your lordship and to assure themselves of the province so wrongfully taken and unjustly possessed by them which our sufferings we hope your honour apprehends and is sensible and which tho' they were ever violent even like a tempest for the time yet now (thanks be to God) all is past and calm and the whole province in perfect subjection again under your lawful government and authority during all which time your honour cannot be ignorant what pains and travell your friends underwent in aiding your dear brother for the subduing of those rebels and after again in conserving the province for your lordship never sparing labour cost or estate which they were or could be possessed of untill they had accomplished their intended purpose and desires in regaining it again and settled it under your lordship's protection and dominion, As for Mrs. Brent's undertaking and meddling with your lordship's estate here (whether she procured it with her own and others importunity or no) we do verily believe and in conscience report that it was better for the collony's safety at that time in her hands than in any man's else in the whole province after your brother's death for the soldiers would never have treated any other with that civility and respect and though they were even ready at several times to run into mutiny yet she still pacified them till at the last things were brought to that strait that she must be admitted and declared your lordship's attorney by an order of court (the copy whereof is herewith enclosed) or else all must go to ruin again and then the second mischief had been doubtless far greater than the former so that if there hath not been any sinister use made of your lordship's estate by her from what it was intended and engaged for by Mr. Calvert before his death as we verily believe she hath not then we conceive from that time she rather deserved favour and thanks from your honour for her so much concurring to the publick safety than to be justly liable to all those bitter invectives you have been pleased to express against her.

Hereupon we cannot choose but wonder why your lordship should write so tartly against the people who are all involved under the censure of your lordship's letter for protesting against all the laws which were pretended to be in force and enacted by Leonard Calvert, esqr., deceased our late governor at the last assembly held by him afore his death, as for the illegality of them we shall here briefly shew your lordship and hereby we hope shall sufficiently vindicate ourselves from such foul aspersions laid upon us from your lordship.

That the assembly then wherein these laws were pretended to be enacted as

afore was called first by captain Edward Hill who was not so accounted by us or esteemed by your lordship according to your instrument sent hither this year for the rightful governor of this province which assembly was continued only by Mr. Calvert never declaring any new summons at all to the inhabitants of the province for that purpose which ought to have been done in that case by him, but within a very short time after he had surprised all those who had combined themselves against him and cast them in prison proceeded to the enacting of laws with the members as afore called by captain Hill and under adjournment the whole house of commons (two or three only excepted) consisted of that rebelled party and his professed enemies to them he declared that they should be free during the assembly only the copy of which record is herewith enclosed, also we cannot choose but wonder how your lordship could suppose it fit and necessary that those your loyal friends and even those who concurred most to the necessary defence and preservation of the province should be deprived by law of [their] dues for so great and good a service done and effected by them and principally for your lordship's honour and glory notwithstanding all this it should be required at their hands to pay themselves a levy upon themselves. We much wonder also that your honour should consider or think much that a few cattle not above 11 or 12 cows at the most of your lordship's known clear stock and those conquered again to your lordship and taken from the unlawful possessor should be distributed among those men who had ventured and hazarded their fortunes lives and estates in the defence recovery and preservation of your lordship's province especially those very cattle being engaged with all other your lordship's estate here both by Mr. Calvert and Mr. Lewger to the soldiers here in consideration for their hire and wages, and lastly we wonder that such exactions should be made and required upon a people and those your faithful friends who had conquered the place many of them as yet being unsatisfied and groaning under their late hearty sufferings which have been great indeed when as we can make it clearly appear to your lordship that we have already satisfied and paid out of our own labour and effects towards the recovery reservation and sole defence of your lordship's province 60,000 lb. tobo. which is far more (my lord) than all our recovered estates in the province were then worth had they been sold at outcry, and further that such strait conditions of plantation should be proposed and demanded by your lordship as serve only to make the place desolate of spiritual comfort especially nevertheless such are the loyal affections and hearty well wishes of us your lordship's poor friends towards your honour that we really suppose and verily believe all former mistakes and less well understandings that have happened between your honour and us for these many years have proceeded only from mere mistakes and misinformations that your honour is unfortunately subject to have of us at so vast a distance there is from your honour and being now cordially desirous justly and unanimously to express a willing forwardness to give your lordship all just and honourable satisfaction that can be expected from a people at present so illiterate and void of that understanding and comprehension necessary for a mature and wise discussion of such a body of laws as is now proposed by your lordship to be assented unto by us for perpetual laws as we acknowledge ourselves to be, and whereas we have with much solicitude and earnest endeavour according to our weak understanding read over perused and debated upon all the aforesaid body of laws so proposed unto us by your honour in real desires indeed in compliance with your lordship of receiving them as laws but in conclusion finding them so long and tedious containing withal so many several branches and clauses that in prudence we cannot as yet with safety to ourselves and our posterity (being they are to be perpetual) concur to the enacting of them as laws requiring a far more serious and longer discussion of them than at this time we are able to allow thereunto

for the necessary employment we are forced upon in a crop at this time of the year most of us having no other means of subsistence than the same, Besides your honour's directions being such as that none of the said laws are to be recorded by us and enacted by the lieutenant general in your lordship's name without the whole body should be received by us without alteration addition or diminution to it on a serious perusal whereof we find in several parts of it such things as are not convenient or as we conceive it just to pass and so in that respect have thought it most prudential not to meddle at all with the foresaid body of laws but to reflect only on such things as may give your honour for the present most satisfaction and comply most (to the utmost of our weak capacity and present poor condition) with what we conceive your honour most to point and aim at which if we do not mistake are chiefly four, viz.—that the country may be preserved with peace and defended and governed with justice,—2dly. That some competent support may be raised to your lordship of the same and your lieutenant here.—3dly. That a stock of cattle may be raised again for your lordship, and lastly that all should be satisfied who had concurred to the regaining and conserving of the country, in compliance with all which we have first chosen and selected out of all your lordship's laws such as seemed to us most conducing to confirm a long desired and settled peace among us and have further added such others of our own as we conceive to be most necessary and best suitable to our present condition and towards a future support out of this colony to your lordship: we have with all loyal expressions of our hearty well wishes to your honour so far as the present weak and poor condition of this colony is capable of passed our consent to a law that your lordship and your heirs for seven years shall have a custom of 10 lb. of tobo. upon every hhd. of tobacco laden upon any Dutch vessel to be exported out of this province so that your lordship will graciously be pleased that the one half thereof may be yearly be employed towards the satisfying of all just claims touching the recovery and defence of your lordship's province as shall be brought in and made appear here in the secretary's office before the last of March next until they shall be fully discharged and by this your lordship's friends also in a short time we hope and verily believe will be complied with to a great deal of comfort and satisfaction on all parts, and lastly we have also enacted by a law that an assessment shall be laid upon all the inhabitants of this province to raise within these two years from the date hereof 16 cows and a bull which is by a third more than ever was known to be found certainly of your lordship's own proper stock in this colony since the recovery of the same though it is true more understand your lordship's (the right owners not being able to prove them theirs being unmarked in the time of the late rebellion and desirous to give unto your lordship all honourable satisfaction they could were contented all such uncertain beasts should be understood as your lordship's) were indeed and are disposed of towards the payment of such just engagements and at such rates as was agreed for by your brother afore his death and this we do willingly and freely in an earnest desire if it be possible to beget in your lordship better apprehensions and constructions of our bound affection and loyalty to your honour than hitherto we conceive through our hard fortune you have been pleased to understand of us, and with this humble request also that your lordship will be pleased to ratify and confirm under your hand and seal without further disturbance such disposition as is already made of your lordship's former stock and other personal estate here for the recovery and defence of your lordship's province according to the engagement and disposition thereof made by Mr. Calvert before his death as will appear by several oaths to that purpose taken herewith and verily that title of your lordship's known clear personal estate lost since the first rebellion was in truth so small as that it was not considerable when it was to come in balance with the safety of the province which as

the then present condition of things stood hung upon so ticklish a pin as that unless such a disposition had been made thereof an absolute ruin and subversion of the whole province inevitably would have followed which had it so happened we ———* your honour might have had far more just cause of indignation against your then governor for so small a trifle to have endangered the province than now in honour justice or conscience you may when thereby alone your lordship's province was then and is still reserved in true and due obedience to your honour especially (as we have often said) your lordship's whole estate here being disposed of bound and made over by your dear brother afore his death for the satisfaction of the aforesaid charges, the which being done and new and clear understanding procured between your honour and us your poor people here we do further humbly request your lordship that hereafter such things as your lordship may desire of us may be done with as little swearing as conveniently may be experience teaching us that a great occasion is given to much perjury when swearing becometh common forfeitures perhaps will be more efficacious to keep men honest than swearing Oaths little prevail upon men of little conscience, and lastly we do humbly request your lordship hereafter to send us no more such bodies of laws which serve to little other end than to fill our heads with suspicions jealousies and dislikes of that which verily we understand not, rather we shall desire your lordship to send some short heads of what is desired and then we do assure your lordship of a most forward willingness in us to give your governor all just satisfaction that can be thought reasonable by us, and whereas your lordship doth seem to be greatly distasted and disgusted at William Tomson your lordship's old servant through some information which have been given your lordship of his comportment here in aiding and siding with the rebels against your lordship's governor and government which information we do assure your lordship to be most false proceeding rather (as we may suppose) out of hatred and spleen towards him than any good affection or love to your lordship for before any thing was proceeded upon in the assembly William Tomson was called and strictly examined before the governor and council and the whole assembly and nothing at all could be proved against him wherewith he was accused to your lordship that verily him in that point most innocent* and further report of him that your honour hath not a more faithful and cordial friend in the whole province and shewed to the utmost of his ability even before in time of and ever since the troubles here than William Thompson is, Therefore we humbly crave of your honour according to your honour's wonted clemency and favour towards him not to harbour such thoughts and give ear to such false suggestions and acclamations against him and further my lord seeing it hath been so notorious an injury and infamy to him we humbly crave that your lordship will intimate hither the next year who were his principal accusers in this point which we the more earnestly beg for that it will give the whole country and himself great satisfaction, Thus in all humbleness to your lordship we have expressed our intentions and good will so far as the tenderness of the province and our abilities can yet well bear hoping to regain your lordship's favour if through misinformation you have conceived otherwise of us not doubting but upon *—we shall be better able to contribute more largely towards your support and comply with your desires withal beseeching your lordship to ratify what we have so earnestly aforementioned and craved at your lordship's hands and then we are confident all things will go on with love peace and unity resting.

Your lordship's humble and faithful servants.

Signed by all the council and
burgesses that day present."

From the house of assembly at Saint }
Maries, 21st April, 1649. }

* So in the record.

"His Lordship's Declaration—Anno. 1649.

Cecilius, &c., to our trusty and well beloved William Stone, esqr., our lieutenant of our said province of Maryland to those of our council here and to the general assembly of freemen of our said province and to all others whom it may concern, greeting, &c., Whereas we sent a body of laws hither the last year by our secretary Thomas Hatton under our hand and greater seal at arms containing 16 in number to be proposed by you our said lieutenant to the assembly there for their consent thereunto together with a commission thereunto annexed signed also by us and affixed to the same seal and bearing date the 12th of August 1643 Whereby among other things was declared our assent to the said laws upon such conditions as were expressed in the said commission which laws were and are so just and reasonable as that upon due consideration they ought to be well liked of by all well affected men according as you and our lieutenant after your receipt of them upon good reason affirmed to us by your letter dated the 20th of February last, nevertheless it seems through some misunderstanding there the general assembly at a session thereof holden at Saint Mary's in April last were unwilling at that time to consent to the enacting of them all as laws there which unwillingness in most of the said assembly was occasioned chiefly as we are informed and have so much cause to believe by the subtle suggestions of some who ought rather to have assisted in promoting all fitting inventions of preserving a good correspondence rather than to raise or cherish any jealousies or discontents between us and the people there but in regard the chiefest pretended exceptions against those laws were as we are informed contained in the act of recognition of our charter of our said province from the late king of England and in that other for the oath of fidelity to us wherein it seems the words (absolute lord and proprietary) which title is the same that is given us by the same charter and the words (royal jurisdiction) are stumbled at by some there who seem to doubt that the former words should infer a slavery in the people there to us and the latter words exceed the power intended to us by the said charter we thought fit hereby to declare that as the former words import no such odious and sinister interpretation so we call God to witness we neither had nor have any intention to enslave the people there by them or any other way whatsoever but indeed the laws themselves do sufficiently clear our intentions herein to all well meaning men if they be well considered for the act of recognition and also the oath of fidelity have both relation to our said charter which provides that all laws shall be made by us and our heirs there with the consent of the freemen of our said province or their deputies or the major part of them and by several other acts contained in the said body of laws there is provision made for freedom of conscience, for freedom of taxes (but such as shall be laid with the assembly's consent) for freedom from martial law but only in time of camp or garrison and within such camp or garrison from freedom of being compelled in any kind to contribute to any war out of our said province without the consent of the assembly, for freedom of trade with the Indians upon reasonable conditions tending more to the public good and tranquillity than to our own advantage, how therefore under such essential provisions for the safety and freedom any reasonable people upon mature consideration have any just occasion of jealousy of being enslaved we nor certainly any well disposed person can imagine as to those other words of royal jurisdiction we do hereby declare that it is intended by our said charter that we should have all such jurisdiction there as the bishops of Durham at any time heretofore ever had exercised or enjoyed or might have had exercised or enjoyed in temporalls within the bishoprick or county palatine of Durham in the kingdom of England and we are well satisfied by learned council here and such as are best read in antiquities that the bishops of Durham before Henry the 7th*

* An error, for "Henry the 8th."

his time (heretofore king of England) had and did exercise all royal jurisdiction within the said bishoprick or county palatine though this latter years their jurisdiction was much diminished by an act of parliament made in the time of the said king Henry and this we thought fit to signify."

[The preceding "letter of the assembly" and "his lordship's declaration," were both taken from the book in the council chamber entitled, "Assembly Proceedings from 1637 to 1658," p. 339 and 351.]

NOTE (LXXIV.) p. 330.

"By the Governor of Maryland.—Proclamation.

"Published *Eod.*—Whereas Charles of blessed memory king of England Scotland France and Ireland, defender of the faith, &c., is lately deceased, These are to give notice to all persons whom it may concern, and in especial to all and singular the inhabitants of this province of Maryland, that his eldest son Charles the most renowned prince of Wales the undoubted rightful heir to all his father's dominions is hereby proclaimed king Charles the second of England Scotland France and Ireland defender of the faith, &c —Long live king Charles the second.—Given at Saint Mary's the 15th of November, 1649.

THOMAS GREENE."

"By the Governor, &c., of Maryland.—Proclamation.

Published *Eod.*—Whereas the king's most excellent majesty Charles the second by the grace of God king of England Scotland France and Ireland defender of the faith, &c., was by order of the governor and council publickly this day proclaimed king. In commemoration thereof and to further the common rejoicing of the inhabitants upon that occasion and that none of them may be debarred therefrom, I do therefore in the lord proprietary's name hereby declare and pronounce a general pardon to all and every the inhabitants of this province for all and every offence and offences by them or any of them committed since the last general pardon published within this province and for all fine forfeiture or penalty for or by reason thereof due.—Given at St. Mary's this 15th day of Novembr, 1649.

THOMAS GREENE."

[Taken from "Council Proceedings from 1636 to 1657," p. 321.]

NOTE (LXXV.) p. 391.

"An act prohibiting all compliance with capt. WILLIAM CLAYBORNE, in opposition of his lordship's right and dominion over this province.

Whereas capt. William Claybourne, heretofore of the isle of Kent within this province of Maryland and now of the colony of Virginia, for his frequent attempts practices and enterprizes in opposition of his lordship's undoubted right and dominion in and over this province, hath heretofore carried himself in a very rebellious manner against his lordship and the government established here under him, and still remains exempt from pardon in that respect, And whereas also upon a full hearing on both sides, by reference from his late majesty, before the lords of the council in England the fourth of April one thousand six hundred thirty-eight the said Claybourne's pretended claim to the said isle of Kent and some other part of his lordship's province and trade with the Indians was rejected, and his lordship's undoubted right and title thereunto, according to his patent, was confirmed, And whereas likewise by proclamation made and published in Virginia the fourth of October one thousand six hundred thirty-eight by the authority of the then governor there with the advice and consent of the council of state in relation to and in pursuance of the said order of the lords of the council, every the inhabitants of that colony were expressly prohibited to use or exercise any trade or commerce with any Indians within the bounds of

this his lordship's province without special license from his lordship for that purpose upon the penalty and forfeiture therein expressed, as by the said order of the lords of the council and proclamation both remaining upon record with the secretary of this province more at large it doth and may appear, And whereas further the said capt. Claybourne hath of late by his letters to the present governor of this province presumed in an upbraiding insolent threatening manner to renew his former pretended claims here in opposition of his lordship's right and dominion, and (as is credibly reported) gives out in speeches that he purposeth e'er long to make some attempt upon the isle of Kent against the peace and safety of this province, For preventing whereof therefore and the better to restrain and keep all and every the inhabitants of this province in their due obedience to his lordship and the government established here under him, Be it enacted by the lord proprietary with the advice and consent of the upper and lower houses of this assembly, that what person or persons soever now inhabiting or which shall from time to time hereafter inhabit or be resident upon the said isle of Kent or any other place within this province that shall hereafter presume, contrary to his or their fidelity or obedience to his said lordship and his heirs lords and proprietaries of this province and the government here established under him, in any sort to assist abet or countenance the said Claybourne or any of his complices or adherents in any attempt practice or enterprize whatsoever upon or against the said island of Kent or any other place within this province or any thing thereunto belonging in opposition to his lordship's and his heirs lords and proprietaries of this province his and their undoubted right and dominion in and over the same upon proof thereof by two sufficient witnesses shall be punished by death and confiscation of all his and their lands goods debts and chattels within this province to the use of his lordship and his heirs lords and proprietaries of the same."

[Taken from the book, in the council chamber, entitled, "Assembly Proceedings from 1637 to 1653," p. 376.—It is also recorded in three different record books in the office of the present court of appeals, as referred to by Mr. Bacon.]

NOTE (LXXVI.) p. 404.

The oath of Fidelity prescribed by the act of 1650, ch. 29.

I A. B. do swear that I will be true and faithful (so long as I shall be a member of this province) to the right honourable Cecilius lord baron of Baltimore lord and proprietary of this province of Maryland and the islands thereunto belonging and to his heirs lords and proprietaries of the same and to his lieutenant or chief governor here for the time being, and will not at any time by words or actions in publick or in private wittingly or willingly, to the best of my understanding, any way derogate from but will at all times as occasion shall require to the utmost of my power defend and maintain all such his said lordship's and his heir's just and lawful right, title, interest, privileges, jurisdictions, prerogatives, propriety, and dominion over and in the said province and islands thereunto belonging and over the people who are and shall be therein for the time being, as are granted to his said lordship and his heirs by the late king of England in his said lordship's patent of the said province under the great seal of England not any wayes understood to infringe or prejudice libertie of conscience in point of religion; And I do also swear that I will with all expedition discover to his said lordship or to his lieutenant or other chief governor of the said province for the time being, and also use my best endeavours to prevent, any plot, conspiracy, or combination which I shall know or have just cause to suspect is or shall be intended against the person of his said lordship or which shall tend any ways to the disinheritance or deprivation of his said lordship's or his heirs their right, title, jurisdiction and dominion aforesaid or any part thereof, And I do swear that I

will not either by myself or by any other person or persons directly or indirectly take, accept, receive, purchase, or possess any lands tenements or hereditaments within the said province of Maryland or the islands thereunto belonging from any Indian or Indians to any other use or uses but to the use of his said lordship and his heirs lords and proprietaries of this province or knowingly from any other person or persons not deriving a legal title thereunto by from or under some grant from his said lordship or his heirs lords and proprietaries of this province legally passed or to be passed under his or their great seal of the said province for the time being. So help me God."

NOTE (LXXVII.) p. 405.

In compiling the text of our history, in that part which contains a statement of the acts of assembly, passed at the session of April, 1650, an important document was inadvertently omitted; which, as it appears to have been a publick and political transaction during the same session of assembly, and as it tends strongly to illustrate the state of *parties*, (whether *religious* or *political*, they being then synonymous,) within the province of Maryland at that time, is here subjoined by way of note.—It is copied from Mr. Langford's pamphlet, before mentioned, entitled, "A Refutation of Babylon's Fall," &c., and is there thus entitled:

"The declaration and certificate of William Stone, esquire, lieutenant of the province of Maryland, by commission from the right honourable the lord Baltimore, lord proprietary thereof, and of captaine John Price, Mr. Thomas Hatton, and captain Robert Vaughan of his sayd lordship's councill there, and of divers of the burgesses now met in an assembly there, and other *protestant* inhabitants of the sayd province, made the 17 day of April, anno dom. one thousand six hundred and fifty.

We the sayd lieutenant, councill, burgesses, and other *protestant* inhabitants above mentioned, whose names are hereunto subscribed, doe declare and certifie to all persons whom it may concern, That according to an act of assembly heer, and several other strict injunctions and declarations by his sayd lordship for that purpose made and provided, we doe heere enjoy all fitting and convenient freedome and liberty in the exercise of our religion under his lordship's government and interest; And that none of us are any wayes troubled or molested, for or by reason thereof within his lordship's sayd province.

James Cox,
Tho. Steerman,
John Hatche,
George Puddington,
Robert Robines,
Walter Bain,
William Brough,
Francis Poesy,

Burgesses.

William Stone, Governor.

Jo. Price,

Robert Vaughan,

Tho. Hatton.

Councill.

Note.—That James Cox and George Puddington were then burgesses for the people at Ann Arundell.

* *Note*—that this is the same man who attests Mr. Srong's pamphlet before mentioned.

* William Durand
Anthony Rawlins
Thomas Maydwell
Marke Blomefield
Thomas Bushell
William Hungerford
William Stumpson
Thomas Dinyard
John Grinsdith
William Edwin
Richard Browne

William Pell

William Warren

Edward Williams

Raph Beane

John Slingsby

James Morphen

Francis Martin

John Walker

Stanhop Roberts
 William Browne
 John Halfhead
 William Hardwick
 Elias Beech
 George Sawyer
 William Edis
 John Gage
 Robert Ward
 William Marshall
 Richard Smith
 Arthur Turner

William Hawley
 William Smoot
 John Sturman
 John Nichols
 Hugh Crage
 George Whitacre
 Daniel Clocker
 John Perin
 Patrick Forrest
 George Beckwith
 Thomas Warr
 Walter Waterling."

NOTE (LXXVIII.) p. 410.

Some particulars relative to sir *William Davenant* the intended governor of Maryland, may perhaps gratify the curiosity of the reader.

Sir *William* appears to have been a zealous royalist, and had, in 1646, retired with the queen, the prince, and others, into France, on the declension of the king's affairs in England; and was sent by the queen, from Paris, in that year, to the king in England, who was at that time a prisoner with the Scotch army at New Castle, to endeavour to persuade him to give up the *Church of England*, and accede to the terms of the Scotch Presbyterians, particularly in the abolition of Episcopacy. Lord Clarendon, in relating this event, remarks, that sir *William Davenant* was "an honest man, and a *witty*, but in all respects inferior to such a trust." He further states, that sir *William*, in conversation with his majesty upon the subject of his mission, "offering some reasons of his own, in which he mentioned the church slightly, as if it were not of importance enough to weigh down the benefit that would attend the concession, his majesty was transported with so much indignation, that he gave him a sharper reprehension than was usual for him to give any other man; and forbid him to presume to come again into his presence. Whereupon the poor man, who had in truth very good affections, was exceedingly dejected, and afflicted, and returned into France to give an account of his ill-success to those who sent him."

Although sir *William's* talents might not have been adapted "to such a trust," as that just mentioned, nor, perhaps, to that of being governor of Maryland in times like those which immediately succeeded his commission for that office, yet, as a man of wit and literary abilities, he was, without doubt, entitled to all the consideration, in which he appears to have been held by the courtiers of those times, and especially by the prince himself, who was afterwards so remarkable for his patronage, or rather fondness for the company, of men of that character. Sir *William* was the *god-son* of Shakspeare; and tradition, to this day, has handed it down at Oxford, that he was the *real* son of that immortal bard. His father, John Davenant, kept the crown-inn or tavern, (which still remains as an inn, or did so within a few years past,) in that city. The landlady thereof, Mrs. Davenant, sir *William's* mother, was a woman of great beauty and sprightly wit; Shakspeare frequented this house in his journeys from Warwickshire to London. Their son, young Will. Davenant, (born in 1606,) our proposed governor, was then a little school-boy in the town, of about seven or eight years old, and so fond of Shakspeare, that, whenever he heard of his arrival, he would fly from school to see him. From this patronage of Shakspeare, without doubt, originated sir *William's* subsequent fondness for the theatre. On the restoration of Charles the second he applied himself much to writing plays, and was the author of almost as many as his god-father. He was the first person who introduced women, as *actresses*, on the stage; before which female characters were

played by men. He died in April, 1663. The above facts are principally selected from *Bell's* edition of Shakspeare, vol. ii. p. 314, 490.

NOTE (LXXIX.) p. 429.

The Leller or Message of the Lord Proprietary, of the year 1651.

Cecilus, &c., To our right trusty and well beloved Willm. Stone Esq. our lieutenant of our said province of Maryland, and to our right trusty and well beloved the upper and lower houses of our general assembly there, and to all other our officers and inhabitants of our said province, greeting: We cannot but much wonder at a message which we understood was lately sent by one Mr. Lloyd from some lately seated at Ann Arundel within our said province of Maryland to our general assembly held at St. Mary's in March last, but are unwilling to impute either to the sender or deliverer thereof so malign a sense of ingratitude and other ill affections as it may seem to bear, conceiving rather that it proceeded from some apprehensions in them at that time grounded upon some reports in those parts of a dissolution or resignation here of our patent and right to that province, which might perhaps for the present make them doubtful what to do, till they had more certain intelligence thereof from hence, and we hope they are as willing as we that we should so understand it, wherein we shall be the more confirmed, if upon finding by letters this year from their friends here, (and in particular from Mr. Harrison,) those rumours and reports to be false, (as they are,) which we are informed were spread there by some ill-affected persons, they shall for the future give us better satisfaction of their intentions and integrity towards us, not only by conforming themselves with the rest of the inhabitants to the general government of that province, under which they did voluntarily put themselves, but also by concurring in all reasonable things with us for the public peace and happiness of that province, as well as for the firm establishment and preservation of our right there, and especially in those laws, which their own burgesses in a former general assembly, together with the other members thereof, have already consented unto, and unto which we for their full satisfaction sent last year our assent, with such alterations as they themselves desired, as by our said assent under our hand and greater seal at arms transmitted thither more at large appears, unto which we refer you, those laws providing as much for the good and security of the people there as for our own. In consideration, therefore, of a better compliance from those people with us and our government there for the future, we shall not any further expostulate or make any further reflection on that message, till further occasion given us by them, which we hope we shall never have, than by putting them only in mind that a government divided in itself must needs bring confusion and consequently much misery upon all the people under it, wherein the authors of such division, if it should continue, which God forbid, are like to have as great, if not greater, share in the end than any others, whatsoever they may fancy to the contrary: the fomenters of discord may justly expect sad calamities from the same if they do not in time see and rectify the same, which we conceive ourselves bound in honour and conscience and in justice to ourself, as well as for the publick peace and welfare of the people under our government there, to provide for as well as we can, that is, in the first place to admonish them thereof, but if that will not prevail then to make use of our authority with the assistance of well affected persons to compel such factious and turbulent spirits to a better compliance with the lawful government there; And accordingly we do hereby will and require you our said lieutenant to proceed with all such as shall be for the future refractory in that kind, and do also require as well our council and general assembly as all other our officers and well affected inhabitants of our said province to be aiding to you therein for the preservation of the publick peace and quiet of the

people there; and for prevention in time of such miseries and calamities, which may ensue upon such divisions, and in case any of the English inhabitants of that province shall at any time hereafter refuse or neglect to send burgesses to our general assembly there, being lawfully summoned for that purpose, we will and require all the other members of our said assembly, which shall lawfully meet upon such summons, to proceed, as they ought and may lawfully do, in all business belonging to a general assembly there, notwithstanding any such refusal or neglect as aforesaid, and to fine all such refusers or neglectors according to their demerits, and moreover in case they shall wilfully persist in any such refusal or neglect as aforesaid, after they have been admonished thereof by our lieutenant of the said province for the time being or such as he shall from time to time appoint for that purpose, then that they be declared enemies to the public peace of that province and rebels to the lawful government thereof, and that in such cases our lieutenant and council of the said province for the time being according to our trust reposed in them do efficaciously proceed against them as such, and use all lawful ways and means to reduce them to their due obedience, We also understand that sir William Berkeley hath lately taken upon him to grant a commission to one Edm'd Scarborough of Accomack in Virginia to seat Palmer's Island within our said province, and to trade with the Indians in and through our said province without any lawful authority derived from us; which [is] so strange [an] usurpation upon our rights there, as we cannot easily believe it to be true; but, in case the said Scarborough or any other should presume, upon pretence of any such commission, to seat or trade in or through any part of our said province without a lawful authority derived from us, We will and require you our said lieutenant, according to the trust we have reposed in you, to use your best endeavours to hinder him or them from so doing, and to seize upon his or their person, boats, and goods, and to proceed against him or them according to the laws of our said province, or in default thereof according to your best discretion, for vindication of any such wrong done to us and preservation of our just rights there, and we will and require our said council, general assembly, and all our officers and other the inhabitants of our said province, to be aiding and assisting to you therein, as occasion shall require. And whereas we understand, that, in the late rebellion there [in] one thousand six hundred forty and four, most of the records of that province being then lost or embezzled, no inrollment remains now there of divers patents of land formerly granted by us in that province, which may hereafter prove very prejudicial, not only to us and our heirs, but also to the patentees of any such lands and their heirs, and cause many suits and controversies, in case their patents should by any accident be lost, We therefore for the prevention thereof do hereby will and require you our said lieutenant to issue out a proclamation there, requiring all persons within a certain time therein to be prefixed to produce to our surveyor general or his deputy there all such pattents from us by which they or any of them respectively claim any land within our said province, and that thereupon a true list thereof be delivered unto you, and to require our secretary there also to give you a list of all such pattents of land formerly granted by us [as] are now remaining upon record, whereby upon comparing the said lists together you may see what pattents are not remaining upon record, and to require all such persons as claim any land within our said province by virtue of any such pattents not now remaining upon record there, to cause them to be inrolled in our secretary's office there, within some convenient time to be limited by you in the said proclamation for that purpose. And whereas we understand, that certain Indians of several nations, to wit, the Mattapanians, the Wicomocons, the Patuxents, the Lamascons, the Highahwixons, and the Chopticons desire to put themselves under our protection, and to have a grant from us of a certain tract of land in the head of

Wicomoco river, called Choptico, resolving there to live together, that they may neither injure the English nor the English them, the said quantity of land being as we are informed about eight or ten thousand acres, which we conceive may be a means not only to bring them to civility but also to christianity, and may consequently be as well an addition of comfort and strength to the English inhabitants as a safety and protection to those Indians, who having been natives and former inhabitants of that part of our said province, where the English now inhabit, and not only always well affected unto them but also willing to submit themselves to our government, we esteem ourselves bound in honour and conscience to allow them, according to their desire, some place of habitation there, by a title derived from us, and have therefore thought fit for that purpose, and do accordingly hereby authorise and require you our said lieutenant to cause, by a declaration and command in our name under the great seal of our said province, [such tract of land,] as the said Indians above mentioned shall, (with the approbation of you and our surveyor general there,) make choice of, to be erected into a manor for the use of us and of our heirs for ever, with court-baron and court-leet, as occasion shall require in and for the [said] manor, and to be called by the name of Calverton-manor, of which manor our pleasure is, that a thousand acres in the first place be made choice of by our surveyor general there in the best and most convenient place of the said manor and set apart as the demesnes thereof to be reserved for the only use of us and of our heirs; And we do hereby authorise and appoint our surveyor general Robert Clarke, gent. to be our steward of the said manor, and in our name to keep court-baron and court-leet as occasion shall require in and for the said manor, and on our behalf grant by copy or copies of court-roll copyhold-estates for one two or three lives of any part of the said manor except the demesnes thereof to any Indian or Indians that shall desire the same and as he our steward with the approbation of our said lieutenant shall think fit, to be held of the said manor upon such services, to be done to us and our heirs by such copyholder for the same, as our steward, with the approbation of our said lieutenant shall also think fit: Provided, that no one copyhold exceed above fifty acres, unless it be to the werowance or chief head of every of the said six nations abovementioned respectively, and not to any of them above two hundred acres a piece, and that upon every copy so to be granted there be reserved a rent of one shilling sterling or the value thereof to be paid yearly to us and our heirs for every fifty acres of land respectively to be granted as aforesaid, and so proportionally for a lesser or a greater quantity of land, which copyhold-estates, so to be granted by the said Robert Clarke steward of the said manor upon such terms and conditions and not otherwise as aforesaid, We do for us and our heirs hereby fully ratify and confirm to every of the said copyholders respectively, and do hereby declare that they shall be as valid in law to every of them respectively against us and our heirs as if we ourselves had immediately granted the same and as if every one of the said copyhold estates respectively had been passed unto every respective copyholder by a grant under our great seal of the said province, any former commission, instruction, declaration of ours to the contrary in any wise notwithstanding. And, whereas by the third article of our last conditions of plantation for the said province, dated the second day of July one thousand six hundred and forty nine, there is allowed one hundred acres to every adventurer or planter for every person of British or Irish descent transported thither, as by the said conditions unto which relation being had may more at large appear, We understand that it may in divers respects be prejudicial to the general good of that colony, in case so great allowance of land should be long continued to all that shall hereafter come to plant there, because by that means the people will be too remotely situated from one another and the whole province perhaps in a short time be taken up by a few

people, leaving little or no conveniency for others to come and add strength and comfort to them, and therefore according to the advice of you our said lieutenant we have thought fit hereby to declare, that instead of one hundred acres expressed as aforesaid in the said third article of our said conditions there shall be only fifty acres of land within our said province allowed to any adventurer or planter for or in respect of any person of British or other descent which shall be transported thither from and after the twentieth day of June one thousand six hundred fifty and two, which our will and pleasure is shall be granted to every adventurer and planter respectively upon such terms and conditions and for such proportionable rents to be paid to us and our heirs as are expressed in our said last conditions of plantation, which in all other things we will shall stand in force till we or our heirs shall declare our pleasure to the contrary, with such alteration of the oath of fidelity therein expressed as we have formerly agreed unto by our declaration dated the sixth of August in the nineteenth year of our dominion over the said province and in the year of our lord one thousand six hundred and fifty and transmitted thither the last year, and we will and require you our said lieutenant to pursue our directions herein accordingly, our said former conditions of plantation or any former commission, warrant, or instruction to the contrary notwithstanding.—And for the better publication and remembrance of the bounds between Virginia and Maryland, and prevention of any controversies, which may otherwise hereafter happen between the inhabitants of Virginia and those of our said province about the same, We require you our said lieutenant to encourage some English as soon as you can to take up such land as shall be due unto them in our said province by virtue of our conditions of plantation or other warrant from us near to the bounds of our said province according to the maps thereof which we sent thither about two years since, and to pass grants in our name under our great seal to such as shall desire the same of so much land in those parts of our said province as shall be due unto them as aforesaid, especially on or near the bounds of our said province on that tract of land which is commonly called the Eastern Shore lying between the bay of Chesapeake and the sea, and also on or near the bounds of our said province on that tract of land which lyeth between the creek or river that runneth by Patowmack-town called in the mapp Patowmack river on the south, and the river which runneth by Piscattoway called in the mapps aforesaid by the name of Piscattoway river on the north, in which last tract is included, as we are informed, that place where Mr. Giles Brent now resides called by him Peace, and also the country called there the Doages; and for the better encouragement of English to make choice of their dividends of land and to seat themselves in the places aforesaid, We do hereby authorise and require you our said lieutenant to grant in our name under our great seal to any adventurer or planter that shall make choice of his dividend and seat a plantation of English on the Eastern Shore or on that tract of land wherein the Doages is included as aforesaid one hundred acres of land in any place of either of those two parts of our said province to him and his heirs for ever for or in respect of every person of British or Irish descent which he shall transport from other parts into our said province according to our last conditions of plantation above-mentioned, and upon such terms and conditions as are therein expressed, which we will shall continue in force in all things to those two last-mentioned parts of our said province till we or our heirs shall declare our further pleasure to the contrary, any thing herein contained to the contrary in any wise notwithstanding.—When we made capt. William Mitchell one of our council of state in that province, which we were induced unto by his ability of understanding, we conceived that he would have been a good assistance to you our said lieutenant and the rest of our council for the better conduct of our government there, and did hope that according to his serious professions to us he would not

only by his advice but also by his example of life have conduced much to the advancement of that province as well as to our honour and his own reputation, but contrarily it seems he hath not only fomented divisions but also lived a most scandalous life, whilst he was there, with certain women which he carried from hence with him there, leaving his wife here in a miserable condition, (all of which was unknown to us till of late since his return from those parts,) and did likewise, whilst he was there, most prophanely in publick discourse profess himself of no religion at all, which we have, by several evidences here as well as from thence, so good proofs, as we find upon our charging him therewith since his return from thence hither, he cannot make any good justification of himself therein, Wherefore we do much lament our misfortune in giving him any countenance or authority who hath so much abused the same by dishonouring us and our government there as much as in him lay, and have thought fit to discharge him thereupon from being any more of our council of state there, as we do by these presents declare him to be discharged from it and also from all other publick authority of justice of peace or otherwise whatsoever in our said province, requiring you our said lieutenant not to permit him hereafter, if he shall return again into our said province, to act there in any thing for the future as one of our council of state or justice of peace of our said province; and for the more timely prevention of any such high offences to Almighty God and such dishonour to us and our said government hereafter as aforesaid by any in eminent authority there, We do hereby declare, that in case any person, who is or shall from time to time be of our council of state or commander of a county or justice of peace in our said province, shall (which God forbid, and we hope will never more happen,) after the publication hereof there live scandalously or viciously with any lewd woman, or profess himself of no religion, and shall be legally convicted of either of the said crimes by his own confession or the testimony of two sufficient witnesses, or shall be twice legally convicted by his own confession or the testimony of two sufficient witnesses of being an usual drunkard, swearer, or curser, we do authorise and require our lieutenant of the said province for the time being to suspend any such person from being of our council of state, commander of a county, or justice of the peace in our said province, and in the room of any such commander of the county so convicted and suspended to appoint some other able and fit person to be commander of that county whereof any such person so convicted and suspended as aforesaid had command, till the cause or causes of such suspension in every of the respective cases aforesaid and proofs of the suspended person's misdemeanors be certified to us, (which we require our lieutenant in such cases from time to time to certify us of, with all convenient expedition,) and until our further pleasure be known therein, either for the discharging or restoring any person which shall be so suspended as aforesaid, willing and requiring you our said lieutenant, as you tender the glory of God, our honour, and the publick welfare of that colony, to be very diligent and circumspect in discovery of any such scandalous and evil comportments and misdemeanors for the future of any of our said council, commander of a county, or justice of peace in our said province as aforesaid, and to proceed with any offender in that kind as you are hereby required and directed, and to cause them also to be further punished according to the laws of that our said province in such cases provided; And we require all those of our said council from time to time to give their due attendance on our said lieutenant at all general assemblies and provincial courts in our said province for the better conduct of the publick affairs and administration of justice according to the great trust reposed in them by us, by which due performance of the duty of their calling they will much endear us unto them and not only advance therein our honour and the publick happiness of that colony, but also their own reputation; but in

case any of our said council being duly summoned by our said lieutenant there for the time being to give his attendance on him at any general assembly or provincial court in our said province, should so much forget himself and us and the good of that colony, as without leave from our said lieutenant or some justifiable impediment to forbear to come or be absent any day from the said assembly or court, We will and require [our said lieutenant] to proceed against such person of our council, who shall so forbear to come or absent himself as aforesaid by fining him according to the laws of our said province, or in default thereof according to the best discretion of him our said lieutenant and the rest of our said council or the major part of them, who shall then be present in any such court or assembly, when any such person shall so absent himself as aforesaid; and furthermore that our said lieutenant do give us notice of any such neglect of any of our said council, and send us good proof thereof, to the end that we may as we see cause put others in their room who will give better attendance on the public affairs there. And, whereas we find that some ill-affected persons to us and the publick peace of that colony do every year, by publishing there many false reports concerning us and our affairs, as well as by other subtle means, endeavour to disquiet the minds of the people there and to infuse jealousies and doubts in our officers and others, thereby to breed diffidence and division if they can between us and them as well as amongst themselves, which may in time prove to be of dangerous consequence, to the ensnarement of divers honest men, whose intentions are good were they not so deluded, We do, therefore, will and require you our said lieutenant and council to use your best endeavours upon all occasions for the timely suppression of all such false rumours and reports as aforesaid, and to find out the authors and publishers thereof, and to cause them to be punished according to their demerits; and we also recommend it to the consideration of our general assembly there, whether it be not convenient to make a law in that province, as there is in England, for the punishment of all such as shall publish false news to the disturbance of the minds of the people and the publick peace, for the better prevention of the mischiefs, which by experience have been found to be caused thereby, not doubting but our said assembly will be as sensible of any dishonour or wrong, which may be done unto us by any such false reports, as we are and ever shall be of any prejudice which may happen by that or any other way to them or to any of the inhabitants of our said province. For the better manifestation whereof and of our mind in all other things herein contained, We have thought fit, and do hereby will and require our lieutenant of our said province of Maryland for the time being to cause this our declaration to be read to the upper and lower houses of our general assembly there, to be published at the usual places of publishing our ordinances and edicts in our said province.—Given under our hand and greater seal at arms the six and twentieth day of August in the twentieth year of our dominion over the said province, and in the year of our lord one thousand six hundred fifty and one.

[Taken from the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1653," p. 424, &c.]

NOTE (LXXX.) p. 435.

"Instructions for captain Robert Denis, Mr. Richard Bennet, Mr. Thomas Stagge, and captain Willian Claybourne, appointed commissioners for the reducing of *Virginia*, and the inhabitants thereof, to their due obedience to the commonwealth of England.

[*Thurloe's State Papers*, vol. I. page 197.]

Whereas the parliament of England, by an act entituled an act prohibiting trade with the Barbadoes, *Virginia*, Bermudas, and Antegoa, hath committed to

this council several powers therein expressed, for the settling, reducing, and governing the said islands, printed copies of which acts are herewith delivered unto you; in pursuance whereof a fleet is now set forth, victualled, armed, and manned, under the command and conduct of captain Robert Denis, to effect, by the blessing of God, the ends aforesaid; and for the management of that service you are jointly nominated and appointed commissioners, and for your better directions and proceedings therein you are to follow and pursue these instructions following:

Such of you as are here, are to repair on board the ship John, or the Guinea frigot of the states, which of them you shall think fit; and, wind and weather permitting, to sail to Virginia, as captain Robert Denis shall direct and appoint.

And upon your arrival at Virginia, you, or any two or more of you (whereof captain Robert Denis to be one) shall use your best endeavours to reduce all the plantations within the bay of Chesopiak to their due obedience to the parliament of the commonwealth of England. For which purpose you, or any two or more of you (whereof captain Robert Denis to be one) have hereby power to assure pardon and indemnity to all the inhabitants of the said plantations, that shall submit unto the present government and authority, as it is established in the commonwealth; in which pardons you may make such limitations and * * * two or more of you (whereof captain Robert Denis * * * * *

And in case they shall not submit by fair ways and means, you are to use all arts of hostility, that lie in your power to enforce them; and if you shall find, that the people so stand out, as that you can by no other ways and means reduce them to their due obedience, you, or any two or more of you (whereof captain Robert Denis to be one) have power to appoint captains and other officers, and to raise forces within every of the plantations aforesaid, for the furtherance and good of the service; and such persons as shall come unto you, and serve as soldiers, if their masters shall stand in opposition to the present government of this commonwealth, you, or any two or more of you (whereof captain Robert Denis to be one) have hereby power to discharge and set free from their masters all such persons so serving as soldiers.

You shall cause and see all the several acts of parliament against kingship and the house of lords to be received and published; as also all the acts for abolishing the book of common prayers, and for subscribing the engagement, and all other acts herewith delivered you.

You or any two or more of you, have full power to administer an oath to the inhabitants or planters there, to be true and faithful to the commonwealth of England, as it is now established, without a king or a house of lords.

You, or any two or more of you (whereof captain Robert Denis to be one) have power to give liberty to the inhabitants and planters, who shall have taken the engagement formerly mentioned, to choose such burgesses as they shall think fit; and send to the place you shall appoint, for the better regulating and governing of affairs there; provided that nothing be acted contrary to the government of this commonwealth of England and the lawes there established.

You shall cause all writs, warrants, and other process whatsoever to be issued forth as occasion shall require, in the name of the keepers of the liberty of England by authority of the parliament.

In case of mortality, or absence of captain Robert Denis, you or any two or more of you, have power to put in execution these instructions.

In case of mortality, or absence of captain Robert Denis, Edmund Curtis, commander of the Guinea frigot, is hereby impowered to act as commissioner with you, or any two or more of you; and he is also in the absence of captain Robert Denis to take the charge and command of the fleet, so far as concerns the shipping, according to the power given to captain Robert Denis.

And lastly, as we doubt not but you will use your best diligence and care in carrying on of this affair of consequence, with which you are intrusted, and that by your good endeavours it will have a good issue; so the council will take the same into consideration, that respect may be had of your pains and travel therein, and of a recompence agreeable to your service, when the same shall be completed, and work, upon which you are employed, shall be finished.

Signed in the name and by order of the council of state appointed by authority of parliament.

Jo BRADSHAWE, *President.*"

Whitehall, 26th September, 1651.

[Taken from Hazard's Collections, vol. 1, p. 556.]

NOTE (LXXXI.) p. 443.

PROCLAMATION.

"By the Commissioners of the Council of State for the Commonwealth of England.

Whereas the right honourable the council of state for the commonwealth of England by authority of parliament have committed to us the commissioners several powers for the reducing settling and governing of all the plantations within the bay of Chesapeake, as by their commission and instructions bearing date at Whitehall the 26th day of September, 1651, may appear, in pursuance whereof the foresaid commissioners having applied themselves to the governor and council of Maryland, (one of the plantations within the limits aforesaid requiring them to submit thereunto and to act accordingly, and having tendered the same several times unto them, so that they might remain in their places, conforming themselves to the laws of the commonwealth of England in point of government only, and not infringing the lord Baltimore's just rights; which they having denied and refused as being inconsistent with the patten of the lord proprietor and their oaths made to him; In obedience, therefore, to the said council's commands in their said commissions to us directed, for the preservation of the honour and interest of the commonwealth of England for settling the colony of Maryland in their due obedience and peace, and for the true administration of justice and right to the inhabitants thereof, until further order can be taken therein, and until the council of state's further pleasure shall be known; We the said commissioners have hereby thought fit to publish these orders following, requiring all the people of this province to see the same kept and observed:

That all writs warrants and process whatsoever be issued forth in the name of the keepers of the liberty of England by authority of parliament, that they be signed under the hand of one or more of the council hereafter named, viz. Robert Brooke, esqr., colo. Francis Yardley, Mr. Job Chandler, captain Edward Windham, Mr. Richard Preston, and lieutenant Richard Banks.

That the said council of Maryland, first taking the engagement, do cause the same to be tendered to all the inhabitants in these words,—We, whose names are subscribed, do promise and engage ourselves to be true and faithful to the commonwealth of England, as it is now established, without king or house of lords.

That the said council of Maryland, or any two or more of them, whereof Robert Brooke, esqr., to be one, do govern and direct the affairs thereof, and hold courts as often as they think fit for that purpose, as also that they summon an assembly to begin 24th of June next coming, the burgesses whereof are only to be chosen by such freemen as have taken the said engagement, and that neither by the said council nor in the said assembly any thing be acted contrary to the laws of England there established, or to their obedience due to the commonwealth of England.

That the commissions for the governor and council be hereby declared void

and null, and to be delivered into the hands of us the commissioners, as also that all records and other matters and things relating to the government of Maryland be delivered into the hands of the council herein by us nominated.

RICHARD BENNETT
EDMUND COURTEIS
WILLM. CLAIBORNE."

Dated at Saint Mary's the 29th day of March, 1652.

[Taken from the book in the council chamber, entitled, "Council Proceedings from 1636 to 1657," p. 267.]

NOTE (LXXXII.) p. 448.

"By the Commissioners of the Council of State for the Commonwealth of England.

Whereas the government of this province was for that present until further time and opportunity of consideration left in the hands of Robert Brooke, esqr., and some others, as by an order or proclamation of the commissioners of the parliament and council of state for the commonwealth of England, dated at St. Mary's the 29th of March last, appeareth, referring the further settlement thereof to an assembly appointed to be held the 24th day of this month, and whereas it appeareth that captain William Stone esqr. governor and Mr. Thomas Hatton secretary of this province were then left out upon some misapprehension or misunderstanding as they alledge in that particular of issuing out writs and all other process whatsoever in the name of the keepers of the liberties of England by authority of parliament, and forasmuch as the foresaid captain William Stone esqr., at the motion and request of the foresaid commissioners and the desire of the inhabitants is content to reassume his former place of governor here and to act according to the foresaid order or proclamation and according to his former power, reserving and saving to himself as also to the aforesaid Mr. Thomas Hatton, Robert Brooke, esqr., and captain John Price their oaths made to the lord Baltimore lord proprietor of this province until the pleasure of the state of England be further known, it is therefore ordered by the aforesaid commissioners with the advice and consent of the council and others the inhabitants, that capt. William Stone esqr., be the governor and Mr. Thomas Hatton, Robert Brooke, esqr., captain John Price, Mr. Job Chandler, colo. Francis Yardley, and Mr. Richard Preston be of the council for this province, who are to govern, order, and direct the affairs thereof in all matters according to the former power and the order or proclamation aforesaid, and to hold courts for the better administration of justice as often as they shall think fit until further orders of England therein, and in the mean time all persons whatsoever are required and commanded to take notice thereof and to conform thereunto accordingly, and since the government is so settled as is known to be to the good liking of the inhabitants it is conceived for that and several other reasons that there is no absolute necessity of a general assembly at present.—Given under our hands at St. Mary's the 28th day of June, 1652.

RICHARD BENNETT,
WILLIAM CLAYBORNE."

[Taken from the book entitled, "Council Proceedings from 1636 to 1657," p. 269.]

NOTE (LXXXIII.) p. 453.

"The peace with the Sasquehanagh Indians, made anno. 1652.

"Articles of peace and friendship treated and agreed upon the 5th day of July, 1652, between the English nation in the province of Maryland on the one party, And the Indian nation of Sasquesahanogh on the other partie, as followeth :

1. First, that the English nation shall have, hould, and enjoy to them their heires and assigns for ever, all the land lying from Patuxent river unto Palmer's island on the western side of the baye of Chesepiake, and from Choptank river

to the north east branch which lyes to the northward of Elke river on the eastern side of the said bay with all the islands, rivers, creeks, ——* fish, fowle, deer, elke, and whatsoever else to the same belonging, excepting the isle of Kent and Palmer's island which belongs to captain Clayborne, But nevertheless it shall be lawful for the aforesaid English or Indians to build a howse or ffort for trade or any such like use or occasion at any tyme upon Palmer's island.

2dly. That if any damage or injury be done on either side at any tyme hereafter, either by the English or Indians aforesaid, or by any other allies, confederates, tributaries, or servants, that reparation be made and satisfaction given from each other from tyme to tyme as the case requires, and as in reason should be done betwene those that are friends and that desire soe to continue.

3dly. That if any the people or servants belonging to the English or to the Indians shall goe away or run away from either side, they shall not be concealed or kept away from each other, But shall with all convenient speede be returned back and brought home, And satisfaction to be made in a reasonable way for transportation by land or water to those that bring them in.

4thly. That upon any occasion of business to the English, or any messadge or the like, the Indians shall come by water and not by land, That there shall not be above eight or ten at the most at one tyme, And that they bring with them the token given them by the English for that purpose, by which they may be known and entertained, As also that the English on their partes, when they send to the Indians, the messenger shall carry the token which wee have received from them.

5thly. And lastly, that these articles and every particular of them shall be really and inviolably observed, kept, and performed by the two nations, before named, and by all the people belonging to them, or that are in amity with them, for ever to the end of the world, And that all former injuries being buried and forgotten from henceforward they doe promise and agree to walke together and carry one towards another in all things as friends, and to assist one another accordingly, But if it soe happen at any tyme hereafter that either party is weary of the peace and intends war then that the same shall be signified and made knowne each to other by sending in and delivering up this writting before any act of hostility or enmity be done or attempted, and that twenty days warning thereof be given beforehand.

These several articles were solemnly and mutually debated and concluded at the river of Severne in the province of Maryland by Richard Bennett esquire, Mr. Edward Lloyd, capn. William Fuller, Mr. Thomas Marsh, and Mr. Leonard Strong commissioners authorized and appointed by the governor and counsell of the aforesaid province, And by Sawahegeh treasurer, Auroghtaregh, Scarhuhadigh, Ruthchogah, and Nathheldianeh warr captaines and councillors of Sasquehanogh commissioners appointed and sent for that purpose by the nation and state of Sasquehanagh, And were fully ratified, done, and confirmed by several presents, gifts, and tokens of friendship mutually given, received, and accepted on both sides. In witness whereof the aforesaid commissioners in behalf of the aforesaid nation have hereunto sett their hands and seales the day and yeare above written.

Ri. Bennett—Edw. Lloyd—Tho. Marsh

The mark of

Will Fuller—Leo. Strong.

Locus

Sawahegeh

×
Sigilli.

The mark of

Auroghtaregh.

* A word not legible in the record.

The mark of



Scarhuhadigh.

The mark of



Ruthchogah

The mark of



Nathheldianeñ.

William Lawson

Locus

Jafer Peter—for the Sweades governor

X
Sigilli

Witness's

[Taken from "Council Proceedings, Lib. HH," p. 62.]

NOTE (LXXXIV.) p. 506.

"August 8th, 1654.

Commission for the administration of justice in the province of Maryland now reduced and settled under the obedience of the commonwealth of England in the name of his highness the lord protector of England, Scotland, Ireland and all the dominions thereto belonging.—Given by the honourable Richard Bennet, esqr., and colo. William Claiborne commissioners for his highness to the reducing and settling the plantations of Virginia and Maryland under the obedience aforesaid.

Whereas by several orders drawn up and published at St. Mary's the 29th of March and the 28th of June, 1652, the province of Maryland was reduced and settled under the authority and obedience of the commonwealth of England as to the government thereof by special order and command of the council of state by commission from the parliament, and was left in the hands of captain William Stone, Mr. Thomas Hatton, and others, who are required to issue out all writs and other process in the name of the keepers of the liberty of England according to the express words of the commission and instructions for reducing settling and governing of all the plantations in the bay of Chesapeake to the obedience of the commonwealth of England as in and by the aforesaid orders or proclamations may and doth appear, and whereas the aforesaid captain William Stone by special order from the said lord Baltimore (as it appeareth) was persuaded and induced to go away from his obligation and the trust reposed in him by issuing forth writs and all other process in the name of the lord proprietary of this province placing and displacing those of the council, and imposing an oath upon the inhabitants contrary to and inconsistent with their engagement and oath to the commonwealth of England upon the penalty and forfeiture of the lands of all such as should refuse to take the same within three months after publication thereof which were then to be entered and seized upon for his lordship's use thereby occasioning great discontent and disturbance among the inhabitants besides the irregularity and cruelty of the said proceedings and the opposition and rebellion therein to the commonwealth of England and his highness the lord protector, and further whereas by a late proclamation dated the 4th of this month published in the said province both the commissioners and the people (who adhered to their engagement to the commonwealth of England and refused to own or acknowledge any other name or authority as to government or to take any other oath but what they had already taken to that power) were charged that they drew away the people and led them into faction sedition and rebellion against the lord Baltimore, whereby not only the lands houses and plantations of many hundreds of people but also their estates and lives were liable to be taken away at the pleasure of the aforesaid lord Baltimore and his officers, by all which unjust and unreasonable proceedings the people were put upon a neces-

sity of standing upon their own defence for the vindication of their just rights and liberties and freeing themselves from those great oppressions whereby the whole province was very much threatened and apparently endangered, for the prevention whereof as also for the relief of those that were so deeply distressed and for the settlement of the province in peace and in their due obedience under his highness, the said commissioners by authority derived to them from his highness the lord protector applied themselves to capt. William Stone the governor and the council of Maryland, according to a declaration of the 15th of this month herewith published, who returning only opprobrious and uncivil language presently mustered his whole power of men and soldiers in arms intending to surprise the said commissioners and (as could be imagined) to destroy all those that have refused the said unlawful oath and only kept themselves in their due obedience to the commonwealth of England under which they were reduced and settled by the parliament's authority and commission, then the said commissioners in quiet and peaceable manner with some of the people of Patuxent and Severn went over the river of Patuxent and there at length received a message from the said captain Stone that the next day he would meet and treat in the woods, and thereupon being in some fear of a party to come from Virginia he condescended to lay down his power lately assumed from the lord Baltimore and to submit (as he had once before done) to such government as the commissioners should appoint under his highness the lord protector.

It is therefore ordered and declared by the aforesaid commissioners that for the conservation of the peace and publick administration of justice within the aforesaid province of Maryland captain William Fuller, Mr. Richard Preston, Mr. William Durand Mr. Edward Lloyd captain John Smith Mr. Leonard Strong Mr. — * Lawson Mr. John Hatch Mr. Richard Wells and Mr. Richard Ewen or any four of them whereof captain William Fuller Mr. Richard Preston or Mr. William Durand to be always one to be commissioners for the well ordering directing and governing the affairs of Maryland under his highness the lord protector of England Scotland Ireland and the dominions thereof and in his name only and no other and to proceed therein as near as may be to the laws of England to appoint and hold courts for the administration of justice and right in such places and at such times as they shall think meet and necessary and any of the commissioners of the quorum to issue out writs warrants and subpœnas as, &c.,† as also that they summon an assembly to begin on the 20th day of October next for which assembly all such shall be disabled to give any vote or to be elected members thereof as have borne arms in war against the parliament or do profess the Roman Catholic religion, and the said Mr. William Durand is hereby appointed to be secretary to the said commissioners and to receive the records from Mr. Thomas Hatton, and captain John Smith to be sheriff for the ensuing year.—Dated at Patuxent river in the province of Maryland the 22d day of July, 1654.

Recordum Verum. Teste
Wm. Durand Secr.

RICHARD BENNET,
WM. CLAIBORNE.

Sir,—You are hereby required to deliver the records of this province and all the papers concerning the same unto Mr. William Durand or whom he shall appoint to receive them from you. July 22d, 1654.

RICHARD BENNET,
WM. CLAIBORNE."

To Mr. Thomas Hatton—these.

[Taken from "Council Proceedings from 1636 to 1657," p. 306 to 310.]

* This blank so in the record, but from other documents it appears to have been meant for Mr John Lawson.

† So in the record.

NOTE (LXXXV.) p. 529.

The copy of a letter intended for his Highnesse.

"May it please your Highnesse :

"Having formerly had the honour to relate to your highness not only in your army, but also as a domestick servant, I humbly thought it my duty to give your highness a true relation of the late disaster of this country, which although it be not a place any way considerable or worth your highness trouble, yet when I consider the great care and pains your highness hath formerly taken both below yourselfe, and almost incredible to those that have not been eye-witnesses of them, for the true settling of government, and avoyding the needless shedding of blood, it gives encouragement to my pen, and assures me that the score upon which I write, will obtain a pardon of your highness for my presumption, it being humbly and in the name of that great God, (whom I know had not your highness feared would never have so palpably helpt your highness in your greatest necessity, and fought your battels,) to beg a boon which will I doubt not, absolutely end the needless shedding of blood in this part of the world, in regard now both parties pretend to fight for your highness : My lord, my humble petition to your highness is, that your highness would be pleased graciously to condescend so low as to settle the country, so as wee may heere understand the absolute pleasure and determinate will of your highness therein, the disobeyers of which cannot after your highnesse's known pleasure but in a moment perish, and the rest live secure and happie. My lord I am an absolute stranger heere as yet having not beene a month in the countrie, in which time this unfortunate action fell out, so much the sadder, in regard of the common enemie the Indian who ever takes advantage by our intestine troubles being both cruel and potent, and therefore I hope will be a motive to further the charitable condescending of your highnesse for settling the country. My lord having had a very tedious passage being necessitated to stay above two months in Bermudas and above one month in Virginia, so that I was above halfe a year from the time that I came out of England to my arrivall in Maryland, at which arival I found the country in a great disturbance, the governour captain *Stone* being ready to march with his army (which heere is considerable if it consist of 200 men) against a partie of men at a place called *ANNE-ARUNDEL* who the yeer before (pretending a power from your highnesse as also that your highnesse had taken the lord *Baltimore's* country from him) bred a great disturbance in the country and withall tooke away the governour's commission from him, which governour being since informed by a gentleman by name *Mr. Eltonhead* (one that came out of England two or three months after me) that the lord *Baltimore* kept his patent, and that your highnesse had neither taken the lord *Baltimore's* patent from him nor his land, hee thought hee might act by the contents of his former commission from the lord *Baltimore* and accordingly went up to reduce those people to the lord *Baltimore's* government, but still under your highness command, as formerly under the king's, having heer in the country before I came first solemnly proclaymed your highness, as also in all proclamations and public edicts ending with *God preserve the lord protector, and the lord proprietary*. Now going up to reduce these people if possible by fair meanes, a declaration to which purpose the governour desiring me to bear him company the march, I got leave to carry to them, in the end of which the governour did protest, as in the presence of Almighty God, that he came not in a hostile way to do them any hurt, but sought all meanes possible to reclaime them by faire means; and to my knowledge at the sending out of parties (as occasion served) he gave strict command, that if they met any of the *Anne-Arundell* men they should not fire the first gun, nor upon paine of death plunder any : these were his actings to my knowledge upon the march; but coming nearer to them, there was a ship a merchantman called

the *Golden Lion*, one *Hemans* commander, and as appears, hired by them, having since received his reward of them, who seeing the governour land his men under the command of his ship, shot at them as they landed over night, and the next morning continuing his course (as I am credibly informed) kild one of the governour's men, and so began the war which after fell out, for the *Anne-Arundell* men comming suddenly upon them on the one side, and the *Golden Lyon* being on the other side, they being in a neck of land invironed round with water except one little place by which the *Anne-Arundell* men came in upon them, where after a skirmish the governour upon quarter given him and all his company in the field, yielded to be taken prisoners, but two or three dayes after the victors condemned ten to death, and executed fowre, and had executed all had not the incessant petitioning and begging of some good women sav'd some, and the souldiers others; the governour himselfe being condemned by them and since begd by the souldiers, some being saved just as they were leading out to execution, and since fall a sequestering their estates, and taking away what they have as if they were meere malignants, and had fought directly against your highnesse, in which I cannot but speake my conscience, knowing that at their first setting out the generall cry was that they went to reduce the country and bring it under the obedience of your highnesse and the lord proprietary, as also the governour who protested to mee before he went out, that had he not been very credibly informed that your highnesse had not taken away the lord *Baltemore's* patent, nor his land, as the *Anne-Arundell* men pretended, he would not stirre in the businesse. My lord, the reason why I take upon mee to give your highnesse an account of this action is nothing but out of my duty to your highnesse to give a true and impartiall account of the proceedings heare, in regard they still keepe the governour and most of the councill prisoners, as also all the chiefe officers till all the shipping is already gone out of the country except one, and till that is gone I heare for certain none of them shall be releast, by which meanes they are not only debar'd from comming for England (as some desired to answer for what they had done before your highnesse and were denied it) but are likewise hindered from writing their grievances, as not being suffered to write to their own wives, but their letters are broke open, so that I cannot but thinke my selfe bound in conscience to declare the truth, as also to remaine so long as I possesse a being in this world,

My Lord,

*Maryland this 13 of
April, 1655."*

your highnesse most obedient and ever

Loyal subject

L. BARBER."

"For the Right Honourable the Lord
Baltemore, these present.

Right Honourable:

I am sorry at present for to let your honour understand of our sad condition in your proviace. So it is, that my husband, with the rest of your councill, went about a month agone with a party of men up to *Anne-Arundell* county, to bring those factious people to obedience under your government. My husband sent Dr. Barber with one Mr. *Coursey* with a message to them, but they never returned againe before the fight began. Also he sent one Mr. *Packer* the day after, with a message, and he likewise never returned, as I heard: but so it is, that upon Sunday the 25. of March, they did ingage with the people of *Anne-Arundell*, and lost the field, and not above five of our men escaped; which I did conceive ranne away before the fight was ended: the rest all taken, some killed and wounded; my husband hath received a wound in his shoulder, but I heare it is upon the mending. My husband, I am confident, did not thinke that they would have engaged, but it did proove too true to all our great damages; They, as I heare, being better provided than my husband did expect; for they hired

the captain of the *Golden Lion*, a great ship of burden, the captain's name is *Roger Hemans*, a young man, and his brother, who have been great sticklers in the businesse as I hear, capitaine *Heman* was one of their councill of war, and by his consent would have had all the prisoners hanged; but after quarter given, they tried all your councillors by a councill of warre, and sentence was passed upon my husband to be shot to death, but was after saved by the enemies owne souldiers, and so the rest of the councillors were saved by the petitions of the women, with some other friends which they found there; onely Master *William Eltonhead* was shot to death, whose death I much lament, being shot in cold blood; and also lieutenant *William Lewis*, with one Mr. *Leggat*, and a Germane, which did live with Mr. *Eltonhead*, which by all relations that ever I did heare of, the like barbarous act was never done amongst christians. They have sequestred my husband's estate, only they say they will allow a maintenance for me and my children, which I doe beleieve will bee but small. They keep my husband, with the rest of the councill, and all other officers, still prisoners: I am very suddenly, God willing, bound up to see my husband, they will not so much as suffer him to write a letter unto mee, but they will have the perusall of what hee writes. Captain *Tylman* and his mate Master *Cook* are very honest men, and doe stand up much for your honour; they will inform you of more passages than I can remember at the present; And I hope my brother will be downe before captain *Tylman* goes away, and will write to you more at large; for he is bound up this day for to see his brother, if they doe not detain him there as well as the rest; the occasion I conceive of their detainment there is, because they should not goe home, to informe your honour of the truth of the businesse before they make their owne tale in England, which let them doe their worst, which I do not question but you will vindicate my husband's honour which hath ventured life and estate to keep your due heere, which by force hee hath lost. And they give out words, that they have won the country by the sword, and by it they will keepe the same, let my lord protector send in what writing hee pleaseth. The gunner's mate of *Hemans*, since his coming down from *Anne-Arundel* to Patuxent, hath boasted that he shot the first man that was shot of our party. All this I write is very true, which I thought good to informe your lordship, because they will not suffer my husband for to write himselfe: I hope your honour will be pleased for to looke upon my sonne, and for to wish him for to be of good comfort, and not for to take our afflictions to heart. And nothing else at present, I rest your honours most humble

Servant,

VIRLINDA STONE.

Postscript.—I hope your honour will favour me so much, that if my sonne wants twenty or thirty pounds you will let him have it, and it shall be payd your honour againe.

Hemans the master of the *Golden Lion* is a very knave, and that will be made plainly for to appeare to your lordship, for he hath abused my husband most grossly.

[The foregoing letters were taken from a pamphlet, entitled, "A refutation of Babylon's Fall," &c. by Mr. *John Langford*, published in England in 1655.]

NOTE (LXXXVI.) p. 533.

"*The Protector to the Commissioners of Maryland.*

[*Thurloe's State Papers*, Vol. IV. p. 55.]

"It seems to us by yours of the 29th of June and by the relation we received by colonel Bennet that some mistake or scruple hath arisen concerning the sense of our letters of the 12th of January last; as if by our letters we had intimated that we would have a stop put to the proceedings of those commissioners, who

were authorised to settle the civil government of Maryland, which was not at all intended by us, nor so much as proposed to us by those who made addresses to us to obtain our said letter; but our intention (as our said letter doth plainly import) was only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other upon the differences concerning their bounds, the said differences being then under the consideration of ourself and council here; which for your more full satisfaction we have thought fit to signify to you, and rest

Whitehall, 26th of September, 1655.

Your loving Friend."

[Taken from Hazard's Collections, vol. 1, p. 594.]

NOTE (LXXXVII.) p. 535.

"Commission to Cap. Josias Fendall.

"C. BALTEMORE—

"Cecilius absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltemore, &c.; To all the inhabitants and people in Maryland and to all others whom these presents shall any way concerne, greeting, Know ye that for divers special causes and considerations us hereunto moving, Wee have revoked and determined and by these presents do declare that wee do hereby revoke and absolutely determine all former commissions granted unto William Stone, esq'r. or to any other person or persons concerning the government of the said province of Maryland and all power and authority granted unto him thereby or to any person whatsoever, Neverthelesse upon consideration that the people there cannot subsist and continue in peace and safety without some good government be settled and established as well for the cherishing and supporting of the good people and well affected as for the punishment of the vitious and disorderly persons there, Wee have thought fit to nominate constitute and appoint, and wee do hereby nominate constitute and appoint Josias Fendall of the province of Maryland in America gent: our lieutenant and chiefe governor of the said province of Maryland with the islands thereunto belonging, And by these presents do grant unto him the chiefe command power and authority under us over the said province and islands thereunto belonging, to have and to hould the same during our pleasure in as ample and large manner to all intents and purposes as was formerly granted by us unto captaine William Stone our late lieutenant there; And wee do hereby nominate constitute and appoint the said captaine William Stone, Mr. Thomas Gerard, colonell John Price, Mr. Job Chandler, and Mr. Luke Barber, and such other person or persons not exceeding three in number as the sayd Josias Fendall shall nominate and appoint to be of our counsell in the said province, and to have the like and as ample authority, priviledges, and advantages as those of our counsell formerly had there; And wee doe further heereby authorise the sayd Josias Fendall to appoint such a fitt person or persons, for whom he will be responsible, as he shall thinke fitt to be our secretary and receiver generall there for the present till our pleasure be further knowne therein, and to cause all rents, arrears of rents, and all other dues, belonging to us in that province to be for our use demanded, leavyed, and payd to our said receiver so to be nominated and appointed by him the said Josias Fendall as aforesaid, and to be afterwards disposed of according to such instructions or directions as wee have or shall give to him the said Josias Fendall for that purpose.—Given under our hand and greater seale at armes the tenth day of July in the five and twentieth yeare of our dominion over the said province of Maryland and in the yeare of our Lord God one thousand six hundred fifty six."

[Taken from the record book in the council chamber, labelled on the back, "Council H H, 1656 to 1668," p. 6.]

NOTE (LXXXVIII.) p. 541.

“*Mr. R. Bennet and Mr. Matthew to Secretary Thurlow.*

[Thurlow's State Papers, vol. V. p. 482.]

Sir,—Since our last application to your honour, we hear that the committee of trade have delivered in their report to his highness; but you may be pleased to take notice that nothing is either said or done by them concerning the Virginia petition, which relates very materially to the business of Maryland, especially in that particular of the bounds by them claimed. And whereas something is offered by the committee, as the agreement of the lord Baltimore and us, it is true, that upon a motion of the committee something was proposed by us, and answered by him to that purpose, that if his highness should think fit to re-establish the lord Baltimore in the government, and to issue out all writs and processes in his own name, that then some provision to be made for the indemnity of the people there in relation to the reducement, that so the lives and estates of his highness's good subjects might not be left to the mercy of the lord Baltimore and his party there, merely for their submission and engagement to the parliament and to his highness.

But we humbly conceive and hope, that there is and will appear to be so much of reason and justice, and so much of his highness's interest recited and expressed in the paper inclosed,* that there will be sufficient cause for his highness to dispose of the government of Maryland (in case it belong not to Virginia) otherwise than to put it into the hands of such a one, who, if once confirmed, will undoubtedly be as ready to slight and oppose the authority of his highness as ever he was to slight and oppose the authority of the parliament, which he hath manifestly and boldly done, and that with a very high hand.

† Sir, your former propenseness to take cognizance of this business makes us presume thus to trouble you, and it being such public concernment in relation to his highness's interest and the good of those profitable plantations, and dispatch of this long tedious dispute, that so those plantations may be settled under the present government, and that we may return to our relations and occasions, from which we have been so long detained.

Your honour's most humble servants,

October the 10th, 1656.

SAMUEL MATHEW,
RICHARD BENNET.

OBJECTIONS against Lord Baltimore's Patent, and Reasons why the Government of Maryland should not be put in his hands, viz.

[Thurlow's State Papers, vol. V. p. 482, A. D. 1656.]

1. By the patent he was to have no land, but such as was uncultivated and inhabited by Pagans only; but Maryland was inhabited, and part of it possessed and cultivated by the English in Virginia, viz.—the isle of Kent, and that long before the name of Maryland was ever heard of.

2. By the patent it is provided, that he make laws with the advice and consent of the inhabitants and freemen; and by the practice of the lord Baltimore and his officers there, the people have no law but what he allows and consents unto.

3. He is enjoined to make laws agreeable to the laws of England; but several of the laws made there were different from and disagreeable to the laws here, as appears by the report of the committee of the navy.

4. By the patent it is provided, that no construction be made thereof, whereby God's holy and truly christian religion, or the heirs and successors of the crown of England should receive any prejudice or diminution.

*The “paper,” here referred to, seems to be the one immediately following, entitled, “Objections,” &c.

As to religion, the governor and all those of the council in Maryland are bound by oath to defend and maintain the Roman Catholic religion in the free exercise thereof. And as to the heirs and successors of the crown of England, it seems they have nothing to do there; for when the late council of state by authority of parliament required them to issue out writs in the name of the keepers of the liberty of England, and to put the laws of England in execution, they answered, they could not do it without breach of their trust and oath to the lord Baltimore, in reference to his commission from the late king; therein preferring the king's authority, which died with him, and lifting it up above that of the parliament, the only visible power at that time in being.

5. Upon this occasion the commissioners, in pursuance of their instructions from the late council of state by the authority of parliament, in March 1652, took away the government from my lord Baltimore and his officers there, and did actually reduce and settle the province of Maryland in the hands of the parliament, according to an act of parliament of the 3d of October 1650; and then in 1654, upon their revolt, it was again reduced and settled in the name and under the authority of his highness the lord protector, and confirmed by a full and free assembly of that province October 1654.

6. The government there being now no more in the lord Baltimore, but in the parliament first, and then in the hands of his highness, and the acting of the commissioners therein being owned and approved by the late council of state, and also by his highness in his letter of the 8th of October, 1655, to the governor of Virginia; the said lord Baltimore, in opposition and contempt of the supreme authority of this nation, by his instructions caused captain Stone and others, to the number of 200 or thereabouts, to rise up in arms against the government so settled there aforesaid; which said captain Stone, and all the rest, after they had committed many and great outrages, in disarming, plundering, and imprisoning those that adhere to his highness's government, and to their engagement and duty in that behalf, were in a field battle overcome, some slain, and all the rest taken prisoners. And so the said lord Baltimore, choosing rather to adventure his title that way, than to wait the determination of the supreme authority here, lost it upon that account as well as by the reducement; in both which respects the government of that province is now in his highness the lord protector's disposal.

And it is humbly conceived, that his highness will not think fit to re-establish the lord Baltimore in such an absolute and unlimited power as he pretends there, for the considerations, and for these further reasons, viz:

1. In respect to the dissatisfaction and malignancy of the said lord Baltimore and his governors from time to time against the parliament and their interest; namely, several commissions gotten from the king at Oxford, taking captain Ingle's ship, and tampering with the seamen, to carry her for Bristol, which was then in the king's hands, proclaiming Charles II. &c.

2. In respect of the many petitions and complaints of the inhabitants of Virginia and Maryland against a popish monarchical government, so contrary unto and so inconsistent with his highness's interest and the liberty and freedom of his subjects; it being also contrary to the known laws of this land, and particularly of the instrument or platform of government.

3. In order to the peace and the common good of those plantations, which mainly consist in uniting and keeping them under one government; whereby dissensions, quarrels, and cutting of throats, likely continually to arise between such near neighbouring plantations, will be prevented, his highness's authority and interest established, trade encouraged, the excessive planting of tobacco restrained, so making way for more staple commodities, as silk, &c., to be raised; the running away of delinquents and persons indebted from one place to another

taken off, and the whole strength [against]* the common enemy the Indian, or any other enemy, the more readily conjoined upon all occasions; besides that old, great, sad complaint of seducing of poor ignorant Protestants, and papists to bear rule over the freeborn subjects of this nation, will be likely hereby in some measure to be taken off, and yet those of the popish persuasion not debarred of any lawful liberty and freedom, either in relation to civil things, or the exercise of their conscience.

RIC. BENNET,
SAMUEL MATHEW.

A paper relating to Maryland.

[Thurloe's State Papers, vol. V. page 483, A. D. 1653.]

As to those specious pretences of the lord Baltimore of a protestant government being always well affected to the parliament, so much money expended upon that plantation.

We humbly conceive, that the contrary hath been showed and proved in divers and sundry particulars; but if it were so, yet it being before the redument, and the consequences thereof as to government (which is that only wherein we are concerned) it belongs not to the matter in hand. For those objections against the report of the committee of the navy, we say, that the same was fully agreed on, and ordered by the committee; that it was accordingly read before the council of state the 26th of November, 1653, by them approved and appointed to be drawn up for the parliament, which was accordingly done, as hath been proved by Mr. Blackburne, and is ready to be further satisfied by col. Mathews and Mr. Wakeman, who were present at all the passages thereof.

To that of the lord Baltimore's patent from the king there are these objections; viz. 1. That the same is surreptitious, king James having passed the same by patent to the adventurers and planters of Virginia, and they actually possessed of the isle of Kent long before, and the lord Baltimore's patent was only for uncultivated places, such as were not inhabited by any but Pagans.

2. As being an exorbitant grant to give away so great a part of the dominions to a private person, and one that never brought in any thing of profit at all, or not considerable, to the revenue here, by custom, excise, or any other way, especially since the change of government.

3. As being contrary to law to put the subjects of this commonwealth under the absolute and perpetual authority of a subject, and such a one, who as a papist is not capable of any office or authority relating to government.

4. In respect to the mal-administration and exercise of the power there in nine several particulars, expressed in the report of the committee of the navy, to which we shall add these two; viz.

1. Here is a power of making laws with the consent of the inhabitants and freemen of the said province; but this liberty hath been denied the people, and the lower house (as he calls it) cut short of that power and privilege, and the people in danger of severe punishment for addressing their petitions and complaints to the supreme authority here proved by his own letters and their petitions, which have been produced.—2. Another clause in his patent is that no construction be made thereof, whereby God's holy and true christian religion, or the heirs and successors of the crown of England shall receive any prejudice or diminution. As for the holy and truly christian religion, if the Romish be it, that's indeed strongly provided for by the laws and officers oaths; and for the heirs and successors of the king, which undoubtedly must be the parliament and his highness the lord protector, what place their commands have taken in Mary-

* The editor, Mr. Hazard has here subjoined the following note.—“This mark” (an asterisk,) “is found in the printed copy from which this is taken; perhaps the word *against* may be wanting here.”

land, and how their authority and those that declare themselves for it, have speed from time to time, is evident by that of capt. Ingle, the proceedings of the parliament's commissioners in that place, and the people's petitions.

5. And lastly, in respect of the parliament's ordinance of the 3d of October, 1650, by which all foreign plantations, as well as the rest of the three nations, were to be brought in and settled under the subjection and obedience of this commonwealth, and the present government thereof, notwithstanding any letters patent to the contrary; and Maryland was accordingly taken in, and the parliament actually possessed thereof by virtue of the said ordinance, as by an order of the parliament's commissioners, dated at St. Mary's in Maryland the 29th of March, 1652, renewed under his highness the lord protector, by an order to that purpose, dated at Patuxent in Maryland, the 22d of July, 1654, and settled under his highness's authority by a free and full assembly of that province the 20th of October, 1654.

Concerning the lord Baltimore's being at Oxford and Bristol with the king, and his excuse thereof to recover a debt.

It hath been shewed and proved, that his work was to engage against the parliament, procuring a commission tending to the ruin of their interest, and of all those that were well affected, their ships, goods, debts, money, &c., the one half whereof the lord Baltimore was to have for his great charges expended in that service; his brother, who was then governor of Maryland, the other half; by which it seems Maryland was not always well affected to the parliament, as is alledged; besides another commission procured and contracted for by the lord Baltimore himself, in his own name, concerning the customs in Virginia, which he was to receive under the king; but how many that never acted any thing in those places, were nevertheless sequestered and proceeded against as malignants. Whereas, it is said, that the committee for petitions in the time of the little parliament rejected the petition of col. Mathews concerning the lord Baltimore, it is not so; they were so far from slighting the same, that they looked upon it as too high for them, and therefore ordered the business to be transmitted back again to the council of state, as more proper for their consideration, as by their order may appear.

Whereas the lord Baltimore alledges, that the council of state did not intend the reducing of Maryland, that the word Maryland was struck out of the commissions and instructions after it had been put in; and therefore the commissioners turned out his officers, and took away the government in Maryland without any lawful authority for their so doing; we say,

That the parliament did intend the reducing of all islands and plantations, notwithstanding any letters patent to the contrary, appears by the ordinance, concerning Bermudas, Virginia, and Antigua, which hath been produced; and that all accordingly have been reduced, and are under the obedience and authority of this commonwealth is apparent. And though it be not our work or duty to question or dispute the parliament's intention, but to obey their commands, which we humbly we conceive we have, yet that the council of state did intend the reducing of Maryland we conceive has been shewed and fully proved thus; viz.

1. Because they well knew it was within the bay of Chesapiack.
2. That they having received an account thereof from the commissioners, approved of what they had done, by sending over the same instructions under the seal the next year.
3. In the report drawn up for the parliament they plainly and expressly say the commissions were sent to Maryland.
4. His highness in his letter of the 8th of October last declares his pleasure, that no obstructions be made to what has been acted concerning the civil go-

vernment in Maryland by the commissioners of the late council of state, in pursuance of their instructions. But if the parliament and council of state did indeed decline the reducing of Maryland, and several times express themselves to that purpose, as hath been often alledged; if they had been so clear in that particular, as hath been said, why then did they not declare themselves so? a line or two to that purpose in three years time surely might easily have been procured, which would have taken off further proceedings, nulled what had formerly passed, and prevented all the many and dangerous disturbances, mischiefs, and blood shed, which hath been occasioned by lord Baltimore's lifting up his own authority and particular interest, derived from the king, in opposition and defiance of the authority and interest of the parliament, and his highness the lord protector.

That it might be argued and disputed concerning the word Maryland, putting in and putting out, as is usual in such cases, is very likely; but the commission and instructions, it seems, were at least drawn up thus, and came so to the commissioners, who lived in Virginia, viz. You shall see the engagement tendered, cause all writs and processes to issue forth in the name of the keepers, &c., and put the laws of England in execution: and this to be done in all the plantations in the bay of Chesapiake.

That the commissioners appointed for carrying on that service, as it doth not appear they expected or demanded more than what the parliament required, so they could do no less, the command being so positive, and the expression so plain and clear.

That the said commissioners coming to Maryland with the said commission and instructions, capt. Stone, governor under the lord Baltimore and his council, denied and refused to submit and to yield obedience to that authority, alledging the king's grant to the lord Baltimore, and their oaths to him, as by their letter of the 29th of March, 1652.

Now besides all other former demonstrations and expressions of their disaffection and disobedience in divers particulars proved, viz. taking capt. Ingle's ship, proclaiming Charles II., practising with the king at Oxford and Bristol against the parliament, &c., whether this only, their refusal to comply, were not a plain denial of the parliament's power, and preferring the king's before it, and consequently a full and sufficient occasion and ground, according to the instructions, for the commissioners to take away the government, being also so ill managed and so much complained of by many, yea, most of the people, and to put it into such hands as would own the parliament, and act according to their commands.

Hereupon the government being now taken away from the lord Baltimore, and settled in the hands of the parliament first, 1652; and then of his highness, 1654; capt. Stone and the rest having taken the engagement, and being thereby bound to be true and faithful to the commonwealth, as now established, and nothing appearing first or last from the supreme authority here to disengage him or any other there; how then could capt. Stone introduce the lord Baltimore's authority, as he did, and publish a proclamation in his name, 1653, enjoining all within three months to take an oath to maintain his power, dominion, &c., upon the penalty and forfeiture of their lands, which were to be entered upon and seized upon to his use? and how could the people take the same, being so inconsistent with, so contrary to their oath to the parliament, under whose authority they then actually were? and then whether those who kept to their engagement, and declared themselves for that against all other authority whatsoever, or else those, who falsely and perfidiously revolted from it, and deserted their duty and the trust committed to them, be in an error, and are justly to be blamed? Concerning the late insurrection and blood spilt on the 25th of March, 1655, it appears, and hath been proved, that capt. Stone being reproved by the

lord Baltimore for resigning without striking a stroke, having so many men in arms, and the commission given to capt. Barber to reduce the people to the lord Baltimore, in case capt. Stone would not, the said capt. Stone was hereby stirred and induced to attempt the said insurrection and rebellion; in prosecution whereof, he the said capt. William Stone did levy war, and to that end forced his highness's subjects to take arms one against another, seized the records of the province, armed Papists and others, plundered, disarmed, and imprisoned all those that refused to join with him, chased capt. Gookins's vessel, and fired several guns at her, broke into their houses in the night, so terrifying and affrighting the people, that many of them left their houses, and took to the woods for safety; threatened to fire the ship *Golden Lyon*, and to take away the lives of the chief in authority, who declared themselves for his highness's government according to their engagement and duty; this being acted in such a time, when the country was in peace and in a quiet settled condition, and carried on so fiercely, barbarously, and bloodily, refusing all offers of accommodation and messages to that purpose; shooting several guns at Mr. Richard Gott, railing at and reviling the people, calling them roundheads, rogues, dogs, &c. setting up the lord Baltimore's colours against the colours of the commonwealth, firing upon capt. Fuller and his party several guns without any parley, and killing Mr. William Ayres before any shot made on that side.

Lastly, that capt. William Fuller, &c. the country being in such a sad, distressed, distracted condition, and so deeply and desperately engaged, endangered, and likely to be ruined, through such a wicked and bloody insurrection and rebellion, having used all means that in them lay for the stopping thereof (the Indians also attending their motion, and falling on at or about the same time) having a lawful power, and being authorized and required to provide for conservation of the peace and administration of justice, and it being in his power, God having given those bloody people into their hands, whether it were not a duty incumbent upon them to do something in order to the peace of the country, by taking away some of the chief and most dangerous incendiaries, who otherwise were very likely to attempt the like another time; and in order to justice, that so many, who were found guilty of insurrection, rebellion, robbery, burglary, and murder, should not all of them be suffered to escape, but some few of those many and great delinquents should suffer and be made examples. And for the manner of their proceedings by a council of war, being there in arms, and in a military posture and condition, and being enabled by the commissioners instructions from the council of state to raise an army, and use all acts of hostility to enforce obedience and conformity, there being no indifferent jury to be had, whether wise men and better lawyers, than can be supposed to be there, might not be likely to fall into such an error, if it were an error, all things well weighed and considered.

A BREVIA of the proceedings of the Lord BALTIMORE, and his officers and compliers in MARYLAND against the authority of the Parliament of the commonwealth of ENGLAND, and against his highness the Lord Protector's authority, laws, and government.

[Thurloe's State Papers, vol. V. p. 486, A. D. 1656.]

The province of Maryland, in that state wherein it stood under the lord Baltimore's government, had more need of reducing than any English plantation in America, for these reasons, viz:

1. The covenant, laws, and platform of government established in England declare the suppression and extirpation of popery, to which his highness oath tends; but the lord Baltimore's government declares and swears the upholding and countenancing thereof, both by the officers and people.

2. The lord Baltimore exercised an arbitrary and tyrannical government, undertook a princely jurisdiction, stiles himself absolute lord and proprietor, constituted a privy council, most of Papists, and the rest sworn thereto. This privy council must be the legislative power, that is to put in execution such laws, the laws which the lord Baltimore himself makes and imposeth; and he makes what laws he pleaseth. The people are indeed called to assemblies, but have neither legislative power nor of judicature, that being appropriated to the privy council or upper-house, so that what is determined, by them, admits of no reference or appeal.

3. The lord Baltimore's grants of land are made, to the end that the grantees might be the better enabled to do him and his heirs all acceptable service, for the tenure is for all service, to which they must all swear, before they have any grants, without any relation to, or mention of the supreme authority of England, either in this or any thing else that passeth there.

4. That the lord Baltimore issued writs and all other process whatsoever in his own name.

5. Charles Stewart, son to the late king, was in Maryland proclaimed king of England, &c. against which no act, order, or proclamation hath been published by the lord Baltimore or his officers; for although Mr. Greene who made the said proclamation, was put out of the government, yet that action was not mentioned to be the cause, but other matters against the lord Baltimore.

6. That there was a notable practice and compliance of the lord Baltimore and his party with the late king's party in Virginia, against the parliament and their ships, the said lord Baltimore having gotten commission from the king at Oxford to seize and take the ships and goods of all such as would not pay the customs there, which the lord Baltimore was to receive, and undertook to put in execution, but failed thereof through the country's non-compliance; which had it took effect as he designed, would have engaged the country in a war against the parliament, to the apparent ruin and destruction of that plantation, besides the exceeding great damage and loss to the state here, in point of revenue by custom, excise, &c. the hindring of trade and navigation, loss of ships and goods to the merchants, and strengthening of the king's party.

Since the reducement of the province under the obedience of the commonwealth of England:

1. That the lord Baltimore hath utterly disowned and contradicted the said reducement (though acted by commission and instructions from the council of state by authority of parliament, by the commissioners appointed, and the ships sent over for that purpose) terming it rebellion against himself and his government there, scandalizing and abusing the commissioners of the commonwealth of England with the opprobrious names of factious, seditious, malicious and rebellious persons, that they should stir up the people to sedition and rebellion, and were the abettors thereof.

2. That the lord Baltimore hath from time to time instigated and animated his officers to oppose and act contrary to the said reducement, as well by force of arms as otherwise, commanding them to apprehend the state's commissioners and their complices, as rebels to him, and deal with them accordingly; requiring his officers to proceed in his own way of government, and to carry all in his name as before, notwithstanding any thing done by the said commissioners; and to undertake to justify them in such their proceedings, and to bear them out in it.

3. The lord Baltimore in his last letter to capt. Stone doth blame him for resigning up his government into the hands of the lord protector and commonwealth of England, without striking one stroke; taxing him in effect with cowardice, that having so many men in arms, he would not oppose, saying, that Bennet and Claiborn durst as well have been hanged, as have opposed him; or to that effect.

4. That in the last rebellion against his highness the lord protector and commonwealth of England, and the government established in Maryland by their authority, the said lord Baltimore and his officers have in high measure abused the name of lord protector, and under that notion have committed many notorious robberies and murders against peaceable and loyal subjects of the commonwealth of England and his highness the lord protector; and to this end raised men in arms, conferring honours upon base and bloody-minded people, as well Papists as others, and employed them in a violent and formidable manner in battle array, with lord Baltimore's colours displayed, to fight against the lord protector's government and people, yea to shoot against his highness's colours, killing the ensign-bearer; by which means much blood hath been shed, many made widows and fatherless, and great damage, danger, and distress brought upon the whole province. The Indians likewise taking occasion and advantage hereby to fall upon the frontier plantations, have killed two men, and taken some prisoners.

Before the alteration of the government here in England,

The lord Baltimore obtained a patent from the king for a tract of land in the bay of Chesapiak in Virginia, pretending the same to be unplanted; by this means takes away the lands from the Virginians, to whom the same of right belongs, and not only so, but takes away the trade with the nations which they had many years enjoyed; and not being able to manage the trade himself, left it to the Swedes and Dutch, who furnished the Indians with powder, shot, and guns, to the great damage and danger of those plantations, and his highness's subjects; and further most unjustly and cruelly disseised capt. Claiborn and others of the island called Kent, though seated and peopled under the Virginian government three or four years before the king's grant to him; and not the land only, but the estates and lives too of such as opposed him or his officers, hanging some, and killing others, who sought the preservation of their rights and interests from popish violence. Such a beginning had that poor unhappy plantation, being founded upon the rights and labours of other men, and begun in bloodshed, robbery, and all manner of cruelty.

[The foregoing papers, in this note, were copied from Hazard's Collections, vol. 1, p. 620 to 630.]

NOTE (LXXXIX.) p. 545.

[The following *part* of a document is copied from a book in the council chamber, labelled on the back,—“Council H. H. 1656 to 1668.” It being the first document recorded in the book, the first leaf of which having been torn out, except a small remnant thereof, a considerable portion of the said document is now lost. On the said remnant, however, are discernible, in the margin thereof, the following words,—“Instruct. 23d *Octobris*, 1656;”—and at the bottom of the said remnant, on the second page thereof, are the words—“in Jesus Christ.”—The third page of the book, which is on the second leaf thereof, and which is entire, commences with the words following:]

—“have liberty of conscience and a free exercise of their religion there, be duly observed in the said province by all the inhabitants thereof, and that the penalties mentioned in the said act be duly put in execution upon any offenders against the same or any part thereof.

3. That his lordship's said lieutenant doe cause such proportions of land to be surveyed and assigned (except royal mines) to such several persons as followeth, until his lordship shall send a new great seal thither (which he will shortly do) whereby the said lands may be granted by patten under the same (viz.)

To capt. Josias Fendall, his lordship's present lieut. there—2000 acres.

To Mr. Luke Barber,—

1000 as.

To Mr. Thomas Truman,	-	-	-	1000 acres.
To Mr. George Thomson,	-	-	-	1000 as.
To Mr. John Langford,	-	-	-	1500 as.
To Mr. Henry Coursey,	-	-	-	1000 as.

Provided that none of the lands above mentioned be assigned in any place formerly disposed of by his lordship or his authority to any other person, nor sett out nor reserved for his lordship's own use. And provided that in the said assignments the usual respective yearly rent of two shillings sterling for every hundred acres of all the said lands to be payed to his lordship and his heirs for the same be reserved and payed respectively or the value thereof in such commodities as his lordship or his heirs or his or their officer or officers appointed from time to time to collect and receive the same shall accept in discharge thereof, for all which this shall be your warrant.

4. That they doe take special care of those widdowes who have lost their husbands in and by occasion of the late troubles theare, viz. Mrs. Hatton, Mrs. Lewis, and Mrs. Eltonhead, whom his lordship would have his said lieutenant to cause to be supplied out of such rents and other profit as are due to his lordship and can be gott, for their present relief and subsistence in a decent manner in case they stand in need thereof, and that they let his lordship know wherein he can doe them any good there in recompence of their sufferings of which his lordship is very sensible, and that they assure them on his lordship's behalfe that he will continue his utmost endeavours (by soliciting his highnesse and council) for the procuring of justice to be done them for the lives of their husbands and satisfaction for their losses from those who have done them so great injuries, which he doubts not but will be at last obtained.

5. That they cherish and comfort in what they can all such persons as have approved themselves faithfull to his lordship and done good service in the late troubles there: that his lordship's said lieutenant preferre those persons before any others to such places and employments of trust and profit as they may be respectively capable of, and in particular Mr. Thomas Truman, Mr. George Thomson, lieutenant Thomas Tunnell, and Mr. Barton, and that his said lieutenant and councill lett his lordship understand from time to time wherein he can upon any occasion requite them and others who have bin faithful to his lordship as aforesaid with any thing there for their advantage according to their respective merits, assuring them that his lordship will be very ready and willing to gratify them in any thing that shall be reasonably desired of him and in his power to doe.

6. That whereas a windmill at St. Mary's which was formerly belonging to major generall Edward Gibbons late deceased was assigned by the said Gibbons his widdowe to his lordship in satisfaction of a debt of one hundred pounds sterling due to his lordship from the said major Gibbons his lordship requires his said lieutenant and councill to take speciall care that the said mill be preserved and improved to the best advantage for his lordship's use and benefit.

7. That they doe take speciall care that no encroachments be made by any upon any part of his lordship's said province, for the better prevention whereof his lordship requires his said lieutenant and councill to cause the bounds thereof to be kept in memory and notoriously knowne especially the bounds between Maryland and Virginia on that part of the countrey knowne there by the name of the eastern shore to which his lordship would have them peruse one of the maps of Maryland which his lordship formerly sent thither whereby the said bounds are described, and his lordship hath also for their direction therein sent heerewith a copy of a proclamation published heretofore by the then governor and councill of Virginia, for prohibiting any of Virginia to trade with the Indians in Maryland without his lordship's lycence which proclamation bore date

4th of October, 1638, and therein are described the bounds between Maryland and Virginia, the said coppye haveing bin transcribed out of another copie thereof which his lordship hath, attested by Mr. Richard Kempe deceased who was secretary of Virginia when the said proclamation was made.—Given under his lordship's seale at armes 23d of October, 1656. C. BALTEMORE."

NOTE (XC.) p. 545.

"Commission to Philip Calvert, Esqr.

Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., To all the inhabitants and people in the said province of Maryland and to all others whom these presents shall any way concern, greeting, Know yee that we reposing special trust and confidence in the wisdom, diligence, and fidelity of our very loving brother Philip Calvert, esqr. have constituted, appointed, and ordained, and by these presents do constitute, appoint, and ordaine him the said Philip Calvert to be one of our councill of state and conservator and justice of peace within our said province of Maryland untill wee or our heirs shall signify our or theyr pleasure to the contrary under our or theyr hand and seale at armes, And wee do hereby give and grant unto him the said Philip Calvert full power and authority for that purpose from time to time and at all times during his so being of our said councill of state there to meete and assemble himself in councill upon all occasions in our said province with our lieutenant of our said province for the time being and others of our councill there, and in all things to doe and act as one of our councill of state of our said province in as ample manner and forme, as any other cancellor of ours there can may or ought to doe (as being of our said councill of state there.) And wee doe hereby further will and grant that he the said Philip Calvert shall have receive and enjoy all such powers privileges preheminences jurisdictions immunities and advantages whatsoever which are belonging and incident to one of our councill of state and conservator and justice of peace there (in as full and ample manner as any other of our councill there) may can or ought to have and enjoy as a cancellor conservator and justice of peace in our said province, Heereby willing and requiring our said lieutenant and the rest of our councill of the said province of Maryland to admitt and receive him the said Philip Calvert as one of our councill of state conservator and justice of peace of and in our said province as aforesaid. Provided allways that he take in open court in our said province the oath of a cancellor of state appointed by us to be taken by those of our councill there before he sitt or act as one of our councill of state and conservator or justice of peace in our said province to be administered unto him by our said lieutenant or any two of our councill there who are heereby respectively impowered and required to administer the same accordingly, And wee doe also heereby constitute appoint and ordain him the said Philip Calvert to be our principal secretary of our said province of Maryland, and to have all such priviledges and benefitts as belongeth to our principall secretary there, And wee doe by these presents appoint constitute and ordaine the said Philip Calvert to be our principall officer and keeper of the acts and proceedings of us and our lieutenant and councill there for the time being, and of and for the entring and recording of all grants by us and our heires to be made of any lands or offices within our said province of Maryland, and for the probates entring and recording of wills and inventorys and granting of letters of administration, and for the entring and recording of all other matters acts and things, which by any instructions lawes or ordinances made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heires or by the appointment of our lieutenant or other chief governor there for the time being, or otherwise, to be entered and recorded, To have and

to hould execute and enjoy the said office and offices together with the privileges and benefitts aforesaid unto him the said Philip Calvert until wee or our heires shall signify our or their pleasure to the contrary and no longer, Provided always that he take in open court in our said province the oath of the secretary there before he act as secretary in our said province to be likewise administered unto him by our said lieutenant or any two of our councill there who are heere-by respectively empowered and required to administer the same accordingly.— Given our hand and seale at armes the seventh day of November in the five and twentieth year of our dominion over the said province of Maryland and in the year of our Lord God 1656.”

[Taken from the record book entitled “Council HH. 1656 to 1668,” p. 7.]

NOTE (XCI.) p. 547.

“Anno. 1657.

“At a council held at St. Mary’s 18 ^o Junii	}	Present	}	The Lieutenant and Mr. Secretary.
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The governor declared his resolution to depart this province and therefore (to the intent justice might heere be duly administered in his absence) did nominate Luke Barber, esqr., his deputy lieutenant and signed his commission in the words following:

Josias Fendall lieutenant and chief governor of the province of Maryland To all the inhabitants and people of the said province and all others whom these presents shall or may concerne, greeting, Whereas the lord proprietary by commission bearing date the tenth of July in the five and twentieth year of his dominion hath given granted and confirmed unto mee the chiefe government of this his said province of Maryland in as large and ample manner to all intents and purposes as it was held and enjoyed by captain William Stone, And whereas his said lordship by commission bearing date the sixth day of August in the seventeenth year of his dominion did grant unto the said captain William Stone (in case of death or absence out of the province) power to nominate elect and appoint any other person of the councill in his place, Know yee therefore that I for divers good causes me thereunto moving and being confident of the industry integrity and fidelity of Mr. Luke Barber to his said lordship, Have nominated constituted and appointed and doe by these presents nominate constitute and appoint the said Luke Barber my deputy lieutenant of this province (reserving unto myself all benefitts allowed me by his said lordship.) To have and to hould the said untill such time as I returne againe into this province or that the lord proprietary or his heires signify theyr pleasure to the contrary, Provided always that the said Luke Barber grant no warrants to any person or persons for the survey of any lands but upon certificate from the secretary of state of this province of rights duly entred in his office for the same strictly charging and requiring all persons to yield all due obedience to him the said Luke Barber as my deputy as they will answer the contrary at their perill.— Given under my hand and seale at St. Mary’s this 18th day of June Anno Domi. 1657.

JOSIAS FENDALL.”

[Taken from the record book, entitled, “Council HH. 1656 to 1668,” p. 9.]

NOTE (XCII.) p. 558.

“Instructions directed by the right honble. Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., To his lordship’s lieutenant and the rest of his lordship’s council of the said province of Maryland for the time being.

C. BALTEMORE.

Inprimis, his lordship doth hereby authorise will and require his lieutenant of the said province of Maryland for the time being to discharge any one of his lordship's council of the said province from being of his lordship's council there who shall desire the same, And his lordship doth also hereby authorise him that he may with the advice and approbation of any three of his lordship's council there for the time being whereof his lordship's brother Philip Calvert, esqr., to be one discharge any person or persons now of his council in that province from being of his lordship's council there who shall refuse to act as one of his lordship's council there or to give attendance at his lordship's courts in that province when they shall be respectively thereunto required by his lordship's lieutenant there for the time being without a just and lawful excuse for the same to be allowed and approved of by his lordship's said lieutenant and his lordship's said brother Philip Calvert, esqr., any former commission warrant or instruction to the contrary hereof in any wise notwithstanding.

Instruct.
20th Nov^r.br.
1657.

2. Whereas his lordship hath herewith sent over a new great seal of the said province by captain Josias Fendall his lordship's lieutenant of the said province and hath committed the custody thereof to him the said captaine Josias Fendall according to his lordship's commission to him for that purpose his lordship doth hereby declare that his lieutenant and keeper of the said greates seale for the time being shall have power and authority to passe grants or pattents in his lordship's name under the same and in such forme as his lordship hath heretofore appointed to any person or persons whatsoever as he shall thinke fitt of such lands in the said province as are or shall be due to them respectively from his lordship by vertue of any of his conditions of plantation or any commission warrant instruction or direction heretofore given or made by his lordship or hereafter to be obtained from him under his hand and seale at arms for the same and to every servant which hath or shall serve out his time with any adventurer or planter fifty acres under the usual rent of one shilling sterling for every fifty acres to be paid yearly to his lordship and his heirs which grants or pattents so to be passed after they shall be respectively attested by the subscription of his lordship's lieutenant of the said province and his lordship's secretary or in case of his the said secretary's death or absence out of the said province of any two or more of his lordship's council there for the time being on the respective grants or pattents and after the commission warrant instruction or direction under his lordship's hand and seale at armes for the passing thereof respectively shall be duly recorded there his lordship doth heereby and not otherwise ratify and confirme as his acts and deeds which shall bind his lordship and his heirs accordingly on that behalfe although such person or persons who shall have any such grant or pattent passed unto them as aforesaid of any lands due unto them by vertue of any of his lordship's conditions did not make their claim nor passe their patents thereof in due time or have since forfeited their right unto the same, any former commission warrant, order, instructions or any other thing to the contrary hereof in any wise notwithstanding, Provided always that all and every such person or persons respectively who shall have any such grant or pattent passed unto them do take the oath of fidelity to his lordship and his heires mentioned in his last conditions of plantation for that province with such alteration in the said oath as was agreed unto by his lordship and directed in the report of the committee for trade dated the 16th of September 1656 concerning that province a copy of which report attested by the clerk of that committee his lordship sent into that province together with his instructions to his lieutenant and council there dated 23d of October 1656, wherein the said report is mentioned, And provided also that such person or persons who have acted or abetted any thing against his lordship's lawful right and jurisdiction there do make and

subscribe in the presence of his lordship's lieutenant and principal secretary of the said province for the time being or one of them a submission of the forme hereunto annexed to remaine upon record there or such other submission as his lordship's lieutenant and secretary or either of them in the absence of the other out of the said province shall thinke fitt before any such grant or pattent of any land in the province be passed under his lordship's great seale unto them respectively as aforesaid, And provided also that before any such person or persons shall have any such grant or pattent passed unto them as aforesaid they do pay or satisfy his lordship's receiver general there for his lordship's use all such arreares of rent not before satisfied or lawfully discharged as are or shall be due unto his lordship for the land which shall be granted by any such pattent from the time that by his lordship's conditions of plantation or other warrant for the passing thereof the said pattent ought to have bin passed untill the time of the passing the said pattents respectively.

3. That whereas his lordship did heretofore send a warrant for the granting ten thousand acres of land in the said province to Edward Eltonhead, esqr. upon certain termes and conditions of a certain number of persons to be transported by the said Edward Eltonhead within a certain time which time was likewise by two declarations afterwards of his lordship enlarged as by the warrants and declarations relation being thereunto had may more at large appear, And whereas neither his lordship nor the said Edward Eltonhead have had as yet any certain information of the passing a grant in Maryland under his lordship's former greate seale of that province of the said land to the said Edward Eltonhead according to the said warrant and declaration and that it is doubtfull whether the said original warrant and declarations be not lost and imbezelled in the late troubles there, therefore his lordship thought fit to send herewith as he nowe doth trew copies under his lordship's hand and lesser seale at armes of the said warrant and declarations, And doth hereby authorise will and require his lieutenant and keeper of his greate seale of the said province for the time being that in case he find that there was not formerly a grant or pattent passed of the proportion of land under the said former greate seale to the said Edward Eltonhead or that the said grant or pattent and record thereof be lost and cannot be found, that then the said lieutenant and keeper of the said greate seale do cause a grant to be passed under his lordship's new greate seale of the said province to the said Edward Eltonhead and his heires of the said proportions of land according to the true intent and meaning of the said warrant, &c.—[N. B. The remainder of this clause being long and entirely of a private nature, it was deemed unnecessary to transcribe any more of it, or to insert it herein.]

4. That his lordship doth hereby authorise his said lieutenant of the said province with the advice and approbation of his lordship's said brother to readmit if he think fitt Mr. Robert Clark to be one of his lordship's councill of the said province to all intents and purposes whatsoever in as ample manner as formerly he was by his lordship's commission for that purpose to him, and also to add any other person or persons inhabiting the said province not exceeding the number six to be of his lordship's councill there to all intents and purposes over and above such as are already or that shall hereafter be nominated and appointed by his lordship to be of his lordship's councill there, Provided that such person or persons so to be added to his lordship's councill there as aforesaid do take the oath of a councillor there to his lordship before he or they do act as one of his lordship's councill there respectively.

5. That his lordship doth hereby authorise his lieutenant of the said province for the time being with the approbation of any three of his lordship's councill there whereof his lordship's principal secretary for the time being to be always one to make any foreigner as he shall think fitt capable of his lordship's condi-

tions of plantation there, and to cause grants or pattendts of land there to be passed unto any such person or persons accordingly as if he she or they were of British or Irish descent any former commission warrant or direction from his lordship to the contrary in any wise notwithstanding.

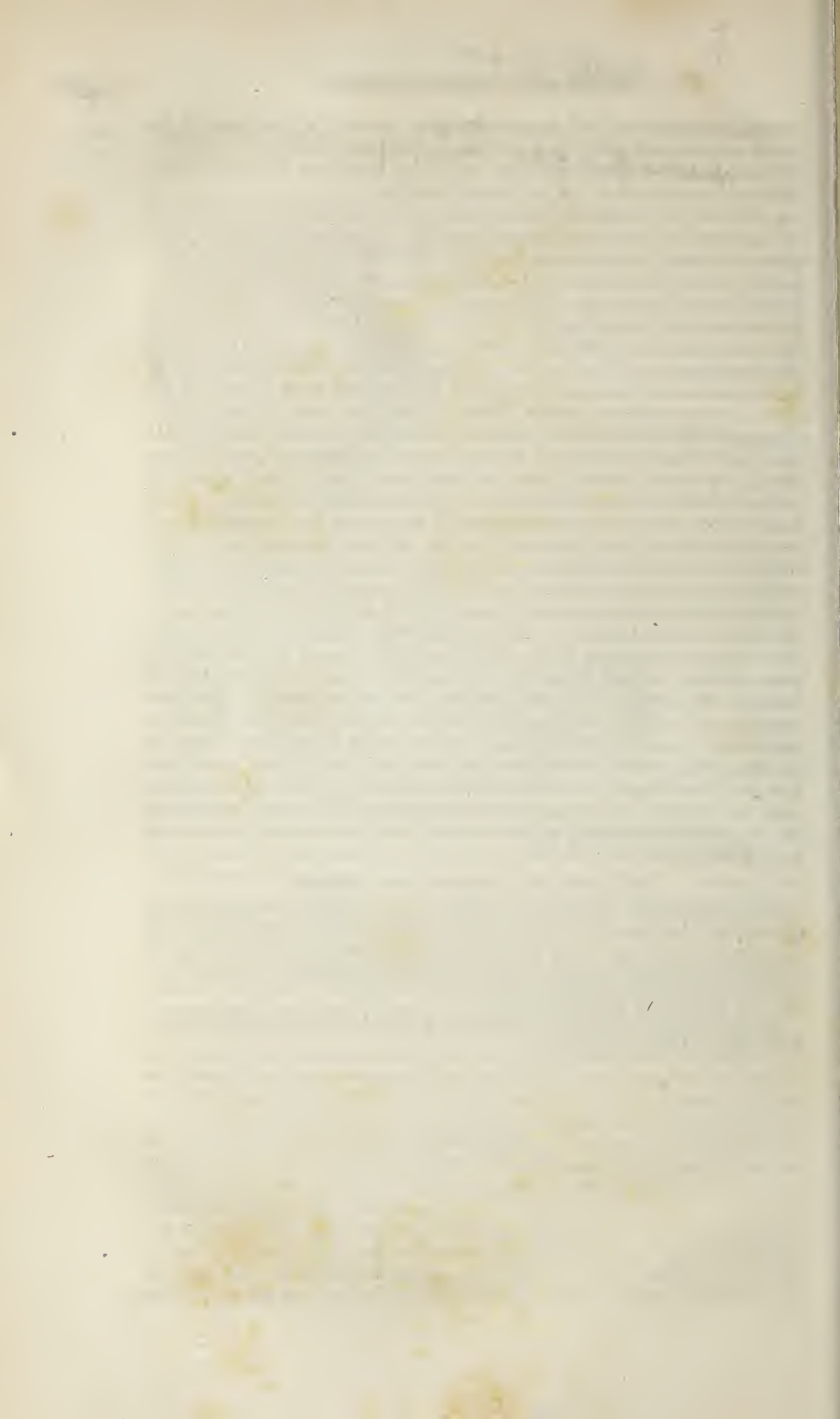
6. Whereas his lordship hath in these instructions and otherwise authorised and appointed his lieutenant of the said province for the time being and in particular the aforesaid captain Josias Fendall his lordship's present lieutenant there to act and do several things with the advice and approbation of his lordship's brother Philip Calvert, esqr. Now in case the said Philip Calvert should dye or by absence out of the said province or otherwise should be disappointed of acting there accordingly his lordship doth hereby authorise and appoint in every such case the said captain Josias Fendall and every other his lordship's lieutenant of the said province for the time being to act and doe the same things with the advice and approbation of captain Thomas Cornwaleys esqr. in lieu and stead of the said Philip Calvert esqr. which his lordship hath by these instructions or any other writing under hand and seale authorized and appointed or shall hereafter by any writing under his hand and seale authorise and appoint to be acted or done with the advice and approbation of the said Philip Calvert esqr. and that in case where any grant or pattent of land is to be passed to his lordship's lieutenant and keeper of his great seale there for the time being by vertue of his lordship's conditions of plantation or any other commission warrant or instructions under his lordship's hand and seale for that purpose his lordship doth hereby declare authorise and require his said brother Philip Calvert esqr. (and in case of his death or absence out of the said province the said capitaine Thomas Cornwaleys) and two such others of his lordship's councill there for the time being as he and our said lieutenant shall appoint, to attest every such grant or pattent to his lordship's lieutenant of the said province and keeper of his great seale there for the time being as aforesaid by the subscriptions of their respective names on every such respective grant or pattent before it shall be in force or bind his lordship or his heirs as his act and deed any thing in these instructions or in any other thing to the contrary hereof in any wise notwithstanding.—Given under his lordship's hand and great seale at armes the 20th day of November in the 26th yeare of his lordship's dominion over the said province of Maryland and in the yeare of our Lord God 1657.

The forme of the Submission above mentioned.

I A. B. doe promise and engage to submitt to the authority of the right hon'ble Cecilus lord Baltemore within this province of Maryland according to his pattent of the said province and to his present lieutenant and other officers there by his lordship appointed to whom I will be aiding and assisting and will not obey or assist any here in opposition to them."

[Taken from the record-book in the council chamber, entitled, "Council, &c. H. H. 1656 to 1663," p. 10, &c.]

THE END.



For index to Vol I

See pages 297 to 314 Vol I

INDEX.

Adams, Thomas, a member of the assembly of 1640, "censured" to ask forgiveness of the governor, on account of some indecent speeches made against the lord proprietary, 180.

Administration, officers for granting administration, and for the probate of wills, appointed by an act of the assembly of 1638-9, 144; an act for causes testamentary, passed at the assembly of 1641, 188; tenor of the act, *ib.*

Admiralty, court of, an act passed at the session of the assembly of 1638-9, to establish a court of admiralty, 127; provisions of the act, 127.

Allegiance, oath of allegiance to the king of England, prescribed at one of the early sessions of the assembly, 110; nature and effect of the oath as prescribed, *ib.*; the prescribed oath taken by the governor and council, 112, 140.

Arundel, Thomas, lord, lord Baltimore marries the daughter of, 193; his descent from an ancient family, *ib.*; notwithstanding the reformation, his family continues to remain attached to the Catholic religion, *ib.*; honours bestowed upon them by James I., *ib.*; their attachment to Charles I., 194; their influence supposed to have induced lord Baltimore to remain neutral during the confusion between the Catholics and Protestants, *ib.*

Assembly of the province, legislative, first meeting held at St. Mary's, and laws enacted there, 34; the lord proprietary directs his brother Leonard, then governor of the colony, to convene the assembly to consider his lordship's dissent to some laws which had been enacted by them, 42; the assembly meets at St. Mary's, 49; mode of representation and form of session, *ib.*; proceedings of the assembly, 50 to 59; they reject the laws sent them by the lord proprietary, and elect to be governed by the laws of England for the time, until they could prepare suitable laws for themselves, 57; governor Calvert authorises the secretary of the province to hold an assembly, during his absence, against the inhabitants of Kent island, 63; the assembly meets in pursuance of the power so given, but adjourns until the governor can be present, *ib.*; they again meet, but again adjourn, *ib.*; they meet according to adjournment, and the governor presides, *ib.*; their proceedings, 63 to 67; they pass an act of attainder against captain William Clayborne, 64; they try Thomas Smith, one of Clayborne's men, and pass sentence of death upon him, 65; the lord proprietary concedes to the assembly the right of enacting laws for the government of the province, 94; his commission to that effect, 94, 95; the governor issues writs to convene the assembly, 96; form of the writs, 97; form of the returns to the writs, 99; *writs of summons*, issued to various individuals, calling them to take their seats in the assembly, 100; the assembly meets at St. Mary's, in pursuance of the call from the proprietary, 101; their proceedings and the bills passed by them, 101 to 160; the lord proprietary's letter conceding to the assembly the right of enacting laws for the government of the pro-

vince, read to the assembly, 101; they pass an act for establishing the assembly 101; substance of the act, 102; *see the act in note XXI., appendix*; they frame rules for the government of the house, 104; the regulations relative to the passage of laws, *ib*; they exercise a compulsory power to force the attendance of the members, 105; they exercise judicial powers, *ib*; they fail to enact many laws which were submitted to them, but on the last day of the session pass an act to ordain certain laws for the government of the province, 106; general provisions of this act, 107 to 160; the constitution of the general assembly more particularly provided for, 151; provisions of the act providing for the assembly, 152; assembly to be convened at least once in three years, *ib*; the assembly is again convened by the governor, 169; proceedings during the session, 172 to 176; rules agreed upon for their government, 173; further exercise of their judicial powers, 179; Thomas Adams, a member of the assembly, "censured" to ask forgiveness of the governor, on account of some indecent speeches made by him concerning the lord proprietary, 180; the assembly is again called about midsummer of the year 1641, 183; material change in the principle of representation, 184; they remain in session and pass but few acts, 185; session closed by prorogation until a future day, 189; the governor issues his proclamation for the assembly to meet in October 1641, *ib*; on account of the absence of the governor, the secretary prorogues the assembly until March, *ib*; the governor issues his proclamation, dated at Kent fort, calling the assembly in March, 190; he issues another proclamation for the same purpose, *ib*; tenor of the proclamation, *ib*; supposed causes of these proceedings, 191; the assembly meets on the day appointed, 194; their proceedings, 194 to 204; they deny to the lord proprietary, or any other power, the right of proroguing or dissolving the house without its consent, 195; supposed causes of this proceeding, 196; they adjourn and appoint a day for their future meeting, 203; another session of the assembly held during the year 1642, 214; proceedings of the session, 215 to 228; decision of a question relating to the different kinds of representatives, 215; a motion made in the assembly, that it might be divided into an upper and lower house, which was negatived, 216; causes of the refusal to separate the assembly, *ib*; a motion to march against the Indians is much opposed by the members of the house, 217; determination of the governor in relation to the motion, *ib*; a bill authorising a levy proposed, but not passed, 218; rules for the regulation of the house, 219; various acts passed at this session, 220, 228;—*see notes XLVII. XLVIII. XLIX. appendix*; an assembly called by Leonard Calvert, shortly after the receipt of his new commission as governor, 237; they meet, *ib*; proclamation issued by the governor to call the assembly, 251; another proclamation, dismissing them before the appointed day of meeting, *ib*; another proclamation for a general assembly, *ib*; slight traces of an assembly having been held in 1644–5, 290; an act supposed to have been passed at that session for the defence of the province, *ib*;—*see act, note LV., appendix*; an assembly called by governor Hill, which meets and adjourns, 296; convened by governor Calvert, agreeably to adjournment, 297; the first distinction made between an upper and a lower house, *ib*; proceedings of the assembly, 298; a meeting of the assembly called by governor Greene, 1647, 315; they meet, 316; variation in the manner of forming the assembly, 317; their proceedings, 318 to 327; an act passed for settling the present assembly, 318; they provide for the payment of the soldiers employed by governor Calvert, 321; Mrs. Margaret Brent asks for two votes in the assembly, one for herself, and the other as the attorney of governor Calvert, which are denied, 323; her protest against all the acts of the present session, *ib*; the members protest against the acts of the assembly of 1646–7, *ib*; governor Greene enters his counter

protest, 324; the lord proprietary sends out laws for the consideration of the assembly, 341; their tenor, 342; acts and proceedings of the assembly of 1693, 347 to 366; the assembly at this session is divided into a lower and upper house, 349; they pass an act concerning religion, 350; tenor of the act, 351 to 356;—see *act, note LXXI., appendix*; they grant to the lord proprietary an impost on all tobacco exported to Holland, and provide for the payment of the demands of the soldiers, against the province, 362; declaration of the members of the assembly of 1650, explanatory of the act granting the impost, &c., 363; they order an assessment of the inhabitants of the province for the purpose of replacing his lordship's stock, which had been paid to the soldiers, 364; they make provisions for the defence of the colony, *ib*; a letter is sent by them to the lord proprietary, 366; he replies to the same, 367;—see *letter and reply, note LXXII., appendix*; governor Stone convenes the assembly, 380; his proclamation to that effect, *ib*; they frame and take an oath, 384;—see *note*; they pass an act to settle the assembly, 385; tenor of this act, *ib*; the general proceedings of this session, 383 to 407; annual session of the assembly held in 1651, 412; the settlement at Providence refuse to send delegates, 413; an assembly is called by captain Fuller, 507; they meet at Patuxent, *ib*; the members chosen for St. Mary's county refuse to serve, 508; a new election is made, and those who refused to serve are taxed with the costs of the same, 509; they pass an act recognizing their own powers, 510; tenor of the act, 511; the laws passed by this assembly, 513, 514, 515; captain Fuller and his council convene the assembly, 549; proceedings of this assembly, 549 to 551; they appoint a committee to examine the accounts of all persons concerned in the sequestration of the estates ordered by captain Fuller and his council, 551.

Annapolis, first settlement of the Puritans at Providence, now Annapolis, 370; the Congregational or Independent Church, being broken up in Virginia, some of the members emigrate to Maryland and settle at Providence, among whom were Mr. Durand and Mr. Bennett, *ib*; they are urged to take the oath of fidelity to the lord proprietary, 371; no grants of land are made to them until the year after their arrival in the colony, 373; probable causes of this delay, *ib*; governor Stone collects his forces and marches against Annapolis, 520; he enters the harbour of Annapolis, 523; is met by captain Fuller with one hundred and twenty men, 525; a battle takes place between the two forces, 525; its results, 526.

Ann Arundel county, erected by an act of the assembly of 1650, 393; the Indians prohibited from entering the county without giving notice, 394; the governor visits and organizes the county, 407; Mr. Edward Lloyd appointed commander of the county, *ib*; his commission, 408; the commanders of Ann Arundel and Kent island authorised to grant land warrants, 409; the settlers in Ann Arundel refuse to send delegates to the assembly of 1651, 413; governor Stone collects an armed force, and marches against the inhabitants of Ann Arundel, 521; he sends Dr. Luke Barber to them with a proclamation, 521; substance of the proclamation, *ib*.

Barber, Dr. Luke, is sent by governor Stone to the inhabitants of Ann Arundel with a proclamation, 521;—see *his description of the events of these times, note LXXXV. appendix*; his high standing and influence with the lord protector, 528; he is detained a short time a prisoner at Annapolis, *ib*; governor Fendall goes to England, and Mr. Barber is appointed deputy governor during his absence, 546; on the arrival of governor Fendall from England, he surrenders up his office of deputy governor, 553.

Baltimore, baron of, Cecilius Calvert, having obtained his charter, prepares to carry into effect his father's plans, 23; the planters of Virginia petition the

Barber - 10, 580

king against the charter obtained by, 24; their success, *ib*; supposed causes of their opposition, 25; sends out a colony under the charge of his brother Leonard Calvert, 26; issues orders to seize captain William Clayborne, unless he should submit to his government, 33; his instructions relative to grants of land, 36, 38; general principles of these instructions, 39; instructions in relation to settling the town of St. Mary's, 40; nature of the first form of government of the colony, 40, 41; ordinance sent by him to his brother Leonard, requiring him to call together the assembly, to take into consideration his lordship's disassent to some laws which had been enacted by them, 42; the assembly meets and refuses to pass the laws sent them by the lord proprietary, 57; they enact laws for the government of the province, which the lord proprietary rejects, 67; captain William Clayborne petitions the king to redress his wrongs, 69; lord Baltimore is ordered by the king to permit Clayborne to enjoy his possessions in the province, 72; the subject of dispute is referred by the king, to commissioners, who decide in favour of lord Baltimore, which decision is subsequently ratified by the king, *ib*; the government of the province seize upon and confiscate all the goods of William Clayborne, 76; lord Baltimore assents to the right of the assembly to enact laws for the government of the province, 94; his commission to that effect, 94, 95; the governor issues his writs to convene the assembly, 96; the rights of the lord proprietary secured by an enactment made at one of the early sessions of the assembly, 112; enumeration of these rights, 113; the lord proprietary entitled to signify his disassent to any bills passed by the assembly of the province, *ib*; entitled to summon by his writ any individuals, at his pleasure, to a seat in the assembly, *ib*; the duration of commissions, in case of the lord proprietary's death, provided for, 155; claims a right to the royal game of the province, 168; appears to have remained neutral during all the confusion between the Catholics and Protestants in England and Ireland, 192; causes of this neutrality, 192; a subsidy granted him by the assembly of 1642, of fifteen pounds of tobacco for every inhabitant of the colony, 204; new conditions of plantation issued by lord Baltimore, 205; sends out a new commission to his brother Leonard Calvert, 233; tenor of the commission, 240; variance between the former and the present commission, 234, 235;—see *Commission*, note LI., *appendix*; orders and instructions sent out by him to governor Brent, 262; expresses his intention of visiting the colony in person, and suspends the granting of land, 263; restricts governor Brent from assenting to any laws, 263; new instructions sent to governor Brent by the lord proprietary, 267; tenor of these instructions, *ib*; orders the governor and council to look after his private farms, 269; supposed cause of this order, *ib*; sends out by his brother Leonard Calvert, on his return to the colony, new commissions for the governor, council, and secretary, 281;—see *Commissions*, note LIV., *appendix*; warrant of attorney sent by him to his brother Leonard Calvert, relating to his private property in the colony, 295; his probable situation in England, *ib*; the administratrix of governor Calvert adjudged to be the attorney of the lord proprietary, 314; part supposed to have been taken by the lord proprietary in the affairs of England at this time, 331; he removes governor Greene, and appoints William Stone governor, 332; causes of the removal of governor Greene, and appointment of Governor Stone, 333; he appoints a Protestant governor, secretary, and council, 333; sends out a new seal and commission for the province, 338; appoints John Price muster-master general, 339; appoints Robert Vaughan commander of the isle of Kent, by a commission from himself, *ib*; an act passed at the assembly of 1649, making penal all seditious speeches tending to divert the obedience of the people from the lord proprietary, 357; punishments prescribed by this act, 358; his treatment of Mrs. Margaret Brent, 361; she is defended by the assembly, *ib*; the

- assembly grant him an impost of all tobacco shipped to Holland, 362; they provide for the payment of his soldiers, and order an assessment to replace his stock which had been used for that purpose, *ib*; new conditions of plantation, and of obtaining grants of land, 375; is authorised by the assembly to regrant all plantations which shall have been deserted for three years, 392; the assembly of 1650 pass an act of recognition of the lord proprietary's right and title to the province, 398; tenor of the act, 399; he appoints Edward Gibbons, a Puritan of New England, one of the council, 411; he authorises governor Stone to seize upon the person and effects of Edmond Scarborough, in case he attempts to fix a settlement at Palmer's island, under the authority given him by the governor of Virginia, 418; his directions for remedying the loss of the records of the province, *ib*; his endeavours to civilize the Indians, 421; he revokes the conditions of plantation granted by him, and ordains new ones, 422; he attempts to settle the boundaries between Virginia and Maryland, 423; proposes to the assembly to pass a law forbidding the spreading of false news, &c., in the colony, 426; the commissioners appointed by the council of state in England to reduce the colonies, go to Maryland, which they reduce to the authority of the parliament, 442; they declare all the commissions issued by the lord proprietary, null and void, and remove all the officers appointed by him, 443; state of the province after the reduction, 444; the controversies between the lord proprietary and the commissioners referred by Oliver Cromwell to certain persons in England, who make a report thereon, 532; orders relating to the colonies issued by Cromwell, 533; the lord proprietary appoints captain Josias Fendall governor, 534;—*see his commission, note LXXXVII., appendix*; supposed motives for this appointment, 535; Fendall is arrested for certain rebellious proceedings, and brought before the provincial court, *ib*; proceedings of the court, 536; the lord proprietary sends out instructions to Governor Fendall, 542; probable tenor of these instructions, *ib*; he makes grants of lands to those who had continued faithful to him during the late contests, 543; instructs the governor to provide for the widows of those who were slain in the late contests, *ib*; his instructions in relation to the boundaries of the province, 544; he sends his brother Philip Calvert to Maryland, 545; sends instructions to the governor and council to make certain grants of land, *ib*; the divided state of the province, 548; he makes an agreement with the agents in England, of the commissioners for reducing the colonies, 553; tenor of the agreement, 553, 554, 555; he prepares instructions and a new seal for the province, 556; governor Fendall sets sail for the province, 558; his arrival there, *ib*; the government of the province formally restored to the lord proprietary, by captain Fuller and his council, 562.
- Bennett, Mr., one of the members of the Congregational Church of Virginia, settles at Providence, 370; is appointed by the council of state of England, one of the commissioners for the purpose of reducing the colonies, 433; assists in the reduction of Virginia, 438; of Maryland, 439 to 443; is appointed governor of Virginia by the commissioners, 445;—*See Commissioners for reducing the colonies.*
- Berkeley, sir William, is appointed governor of Virginia, in the place of sir John Hervey, 149; tenor of the instructions sent to him, *ib*.
- Blasphemy, punishment prescribed for, by the act of 1648, 351.
- Blount, William, is appointed one of the council by the commission brought out by governor Calvert, 235.
- Braithwayte, William, is appointed commander of the isle of Kent, 89; tenor of his commission, *ib*; he receives a second commission altering some of the provisions of the former, 90; is appointed commissioner of St. Mary's county, 280; is appointed lieutenant general, during the absence of governor Calvert,

- in Virginia, 285; special writ issued to him by governor Calvert, requiring his presence at the assembly, 286; is appointed commander of the isle of Kent, 288.
- Brent, Mrs. Margaret, becomes the administratrix of governor Calvert, 315; is admitted by the assembly to be the attorney of the lord proprietary in the province, *ib*; asks a vote in the assembly for herself, and one as the attorney of governor Calvert, 323; her request refused by governor Greene, *ib*; her protest entered against all the acts of the assembly, *ib*; her management of the soldiers in the province, in prevention of mutiny, 361; she is defended by the assembly, from the invectives of the lord proprietary, *ib*.
- Brent, Giles, a special writ is issued to, calling him to a seat in the assembly, 101; is appointed one of the council, 140; is appointed commander of the island of Kent, 166; grant of land on the island made to him, *ib*; appointed *commander* of the *county of Kent*, 246; authorised by the same appointment to hold a county court, *ib*; appointed governor by governor Calvert, during his absence in England, 252; he qualifies as governor, 254; oath taken by him on that occasion, *ib*; takes measures to repel the invasions of the Indians, 256; commissions issued by him to captain Cornwaleys, authorising him to proceed against the Indians, 257, 258; new instructions sent to governor Brent by the lord proprietary, 267; tenor of these instructions, *ib*; his proclamation against Richard Ingle, whom he arrests for high treason, 271; takes offence at some proceedings of the secretary during his absence from the colony, and deposes him, 280; is appointed one of the council in the commission sent out by governor Calvert, 285; special writ issued to him, requiring his presence at the assembly, 286.
- Brooke, Robert, commission to him, 375; its tenor, 376; is made commander of Charles county, 377; is appointed governor by the commissioners, after the reduction of Maryland, 442; upon governor Stone's being reinstated, he is made one of the council, 448.
- Berkeley, sir William, governor of Virginia, is applied to by captain Hill, former governor of the province, to intercede for him with governor Calvert, 308; governor Greene's answer to the letters of sir William and captain Hill, *ib*;—see *Correspondence*, note LVII., *appendix*; sir William Berkeley grants a commission to Edmond Scarborough, authorising him to fix a settlement on Palmer's island, in the province of Maryland, 417; supposed cause of this assumption of right on the part of the governor of Virginia, 418.
- Calvert, Leonard, is sent out by his brother Cecilius in charge of a colony, 26; his arrival in the Chesapeake bay, 27; has an interview with captain Clayborne in relation to his settlements on Kent island, *ib*; sails up the river Potomac, and takes formal possession of the country in the name of the king of England, 28; sails further up the Potomac and visits the natives on its banks, 29; his treatment, *ib*; negotiates with the Yoamacoes and obtains possession of their principal town for his settlement, which he names St. Mary's, 30; is visited by sir John Harvey, then governor of Virginia, *ib*; is visited by the neighbouring chiefs, 31; harmony existing between the natives and the colonists, *ib*; issues a commission to captain George Evelyn, authorising him to put in force the civil authority of the lord proprietary on the island of Kent, 43; tenor of the commission, 44; issues his warrants for convening the assembly, in pursuance of the lord proprietary's orders, 47; form and tenor of the warrant, *ib*; resolves to proceed against the inhabitants of the isle of Kent, who had refused to submit to his authority, with an armed force, 62; authorises the secretary of the province to hold a meeting of the assembly during his absence, if necessary, 63; takes the oath of allegiance to the king of England, which had been prescribed by the assembly, 112; issues a commission

to arrest all persons found trading with the Indians, 114; shortly after issues a new commission, under the act of assembly, for the same purpose, 115; takes the oaths of office and allegiance prescribed by the assembly, 140; issues his orders for organizing and training the militia against the province, 152; demand made by William Clayborne, of his property within the province, 169; the answer of the governor and council to the same, 170; the governor issues his writs for the purpose of convening the assembly, *ib*; forms of the writs, 170, 171; regrants by the governor of those lands on the isle of Kent, which had been sold by Clayborne to divers persons, 181; authorizes the inhabitants of Kent island, by proclamation, to use martial law against the Indians, 183; issues his proclamation for the assembly to meet in October, 1641, 189; on account of the absence of the governor, the secretary prorogues the assembly until March, *ib*; the governor issues his proclamation, dated Kent fort, calling the assembly in March, 190; he issues another proclamation for the same purpose, *ib*; tenor of the proclamation, *ib*; supposed causes of these proceedings, 191; orders proclaimed in relation to the Indians, 213; the governor solicits the military aid of Virginia against the Indians, 228; his letter to the governor of Virginia, 229, 230; proclamation made by the governor, declaring certain Indian tribes therein named, to be enemies to the province, 232; a new commission sent out to him by his brother, the lord proprietary, 233; tenor of the commission, 234; variance between the present and former commission, 234;—see *Commission, note LI., appendix*; alterations made by this commission, in the mode of appointing the council, 235; calls a meeting of the assembly, 237; their proceedings, 238; debate on the act touching passes, 238; decision of the governor on the same, 241; the governor and his servants exempted from military duty, 242; issues his proclamation to regulate the intercourse of the colonists with the Indians, 247; the proclamation, *ib*; his proclamation in relation to an expedition against the Indians, 249; he concludes a treaty with the Nanticokes, 249; his proclamation relating thereto, *ib*; determines not to send an expedition against the Indians, 251; he determines to go to England, 252; appoints Giles Brent governor in his absence, *ib*; exempts Nathaniel Pope from military duty, 252; his return from England, 281; brings with him new commissions for himself, his council and secretary, 281; variances between the present and former commissions, 282;—see *Commissions, note LIV., appendix*; visits Virginia, 285; probable causes of his visit, *ib*; appoints William Braithwayte lieutenant general, &c. during his absence, *ib*; calls an assembly, which does not meet, 286; sends persons to the isle of Kent to inquire into the proceedings of William Clayborne, who had repossessed himself of the island, and resorted to open military violence, 287; declares Clayborne an enemy of the province, 288; is deposited by Clayborne and his associates, and flies to Virginia, 290; great obscurity of the history of the colony at this time, and its causes, *ib*; captain Edward Hill appointed governor of the colony during his absence, 293; warrant of attorney sent him by his brother, the lord proprietary, relating to his private affairs, 295; returns to the province at the head of a body of armed men, and regains the government, 296; governor Hill resigns his office to him, *ib*; convenes the assembly, which had been called by governor Hill, according to adjournment, 297; proceedings before the assembly in relation to the pay of governor Calvert's soldiers, 298; his speech to them, *ib*; determines to subdue the isle of Kent, 303; the island submits, and the government is settled, *ib*; he grants a general pardon, 304; appoints Robert Vaughan commander, &c., *ib*; his death, 306; his character, *ib*; Thomas Greene appointed governor, by Gov. Calvert, before his death, 307; his administratrix adjudged to be the attorney in fact of the lord proprietary, 315; the assembly of 1648,

- provides for the sustenance of the soldiers in the province, 321; depositions taken before the assembly, in relation to the pay of the soldiers, 326;—see *Deposition, note LIX., appendix*; heads of several acts of this assembly which are not extant, 326.
- Calvert, Philip, is sent out to the province by his brother, the lord proprietor, 545; gives him a commission, appointing him secretary of the province, and one of the council, *ib*;—see this *Commission, note XC., appendix*; instructions sent by him to the governor and council to make certain grants of land, among which is one to himself of six thousand acres, *ib*; he is authorised to administer the oath of office to governor Fendall, 546.
- Calvert county erected, its boundaries, 499.
- Catholics, insurrection of, in Ireland, in the year 1641, and massacre of the Protestants, 191; causes and intents of the insurrection, 192.
- Catholic religion, Roman, state of, in the province in the year 1654, 492.
- Cattle, an act relating to the marking of cattle, passed at the assembly of 1649, 359; continued in force by an order of the assembly of 1650, *ib*.
- Charles I., king of England, issues a proclamation against emigration, 42.
- Charters of Virginia, attempts made in England to revive the old charters of Virginia, 210; declaration of the assembly of Virginia, in opposition to their revival, 211; a copy of this document transmitted to the king of England, 212; his majesty's answer to the same, *ib*.
- Charter of Maryland, 9 to 21.
- Church, rights of the, secured within the province by an act passed at one of the early sessions of the assembly, 107; confirmed by an act of 1640, 174.
- Chancery, court of, an act passed by the assembly of 1638–9, to erect a, 131; tenor of the act, *ib*.
- Charles II. proclaimed king throughout the province by governor Greene, 380; he appoints sir William Davenant governor of Maryland, 410; appoints sir William Berkeley governor of Virginia, *ib*.
- Clayborne, William, interview between, and Leonard Calvert, in relation to his settlements on Kent island, 27; Clayborne attempts to interrupt the harmony between the colonists and natives, 32; inducements which led to this, 33; resorts to open force in opposition to the government of lord Baltimore, and sends an armed vessel to capture those of the colony, 34; success of this measure, 35; flies to Virginia, *ib*; application made by the government of Maryland to the government of Virginia, to deliver him up as a criminal, *ib*; is sent to England by the governor of Virginia, *ib*; nature of the charges made against him by the government of Maryland, *ib*, see *note*; an indictment found against him by the first grand jury which met at St. Mary's for piracy and murder, 59; an act of attainder against him, is passed by the assembly, 64; one of his companions, Thomas Smith, is tried by the assembly, and condemned to death, *ib*; he petitions the king in council to redress his wrongs, 69; substance of the petition, *ib*; the king approves his petition, and issues to him an order to lord Baltimore, commanding that nobleman to permit him to enjoy his possessions in the province, 72; the matter in dispute is referred to commissioners, who decide in favour of lord Baltimore, and recommend that the parties be left to their legal remedies, 72; the goods belonging to Clayborne in the province, are seized and confiscated by the provincial government, 76; nature of the trade carried on by Clayborne and the colonists, with the Indians, 76; makes a demand of his property within the province, 169; the answer of the governor and council to his demand, *ib*; the lands which had been sold by him to different persons on the isle of Kent, are regranted by the governor, 181; seems to have repossessed himself of the isle of Kent, 186; persons are sent to inquire into his proceedings there, 287; he is declared an enemy of the province, 288; probable causes of his conduct, 288; Clayborne deposes

- governor Calvert, (who flies to Virginia,) and assumes the government, 290 ; great obscurity of the history of the colony at this time, and its causes, *ib*; an act passed at the assembly of 1650, relating to, 391 ; cause of the passage of this act, *ib*;—see *act*, note LXXV., *appendix*; his conduct towards the colony, 392 ; is appointed by the council of state of England, one of the commissioners for the purpose of reducing the colonies, 433 ; assists in the reduction of Virginia, 438 ; of Maryland, 439 to 443 ; is appointed secretary of Virginia by the commissioners, 445 ;—see *Commissioners for reducing the colonies*.
- Clergy, benefit of, allowed to certain felonies, by an act of assembly, 123 ; definition of, 125.
- Colonies, reduction of the, proceedings in England relating to, 433 to 443 ; the council of state appoint commissioners for the purpose of reducing them, 433 ; instructions given to the commissioners, *ib*; the province of Maryland is at first inserted in these instructions, but is afterwards stricken out, *ib*; the commissioners set sail with a small fleet, 436 ; they stop at Barbadoes and aid sir George Ayscue in the reduction of that island, *ib*; the safe arrival of captain Curtis in Virginia, where he joins with him Bennett and Clayborne, and proceeds to the reduction of Virginia, 437 ; the colony of Virginia is surrendered to the commissioners, 438 ; governor Stone supposed to have assisted the commissioners in the reduction of Virginia, *ib*; the commissioners go to Maryland, 439 ; they make several propositions to governor Stone, *ib*; tenor of the propositions, 440 ; part of them are accepted and part rejected, *ib*; they ask for the governor's commission, which they retain, and remove him and the other officers from their stations, 441 ; they proclaim the authority of the parliament of England, and by the same proclamation, appoint Robert Brooke governor, 442 ; they declare all the commissions issued by lord Baltimore to be null and void, and completely reduce the province to subjection to the parliament of England, 443 ;—see *Proclamation*, note LXXXI., *appendix*. See *Commissioners*, &c.
- Colonies, ordinance of parliament relating to the colonies, 265 ; substance of the ordinance, 266.
- Colonists, their traffic with the Indians, 77 ; their coasting trade, 78 ; their trade to Europe, *ib*; they attempt to erect a settlement on the Schuylkill, 205 ; an expedition against them ordered by the governor of New York, 206 ; are compelled to take out patents for their lands, 250 ; many of those who had been concerned in the rebellion, having fled to Virginia, cautious measures are taken to regulate their return, 311 ; the oath required to be taken by persons coming into the colony, *ib*; proclamation of governor Greene in relation to their return, 312.
- Commissions, continuance of, in case of the death of the lord proprietary, provided for, 155.
- Commissioners for reducing the colonies,—(see *Reduction of the colonies*,)—after the reduction of Maryland they return to Virginia, 445 ; Mr. Bennett appointed governor of that colony, *ib*; Mr. Clayborne appointed secretary, *ib*; they return again to Maryland, 446 ; they replace captain Stone and Mr. Hatton in their respective offices of governor and secretary, 447 ;—see *their Proclamation*, note LXXXII., *appendix*; they return to Maryland, 501 ; causes of their coming, 502 ; they make application to governor Stone, who refuses to recognize their authority, 503 ; they go to Patuxent, at which place governor Stone comes to them, and again submits to a reduction of the province, 504 ; reasons for his having submitted, 505 ; they issue an order to sequester the property of those opposed to them in the late conflicts, 529 ; one of them goes to England, and has an interview with Oliver Cromwell, the lord protector, 532 ; controversies between the commissioners and lord Baltimore, referred to the

- lords commissioners, Whitlocke and Widdrington, *ib*; they make a report on the same, *ib*; their report referred to the commissioners for trade, who make a report to Oliver Cromwell, 537; this report is sent out by lord Baltimore in company with his instructions to the governor, *ib*; tenor of the report, 538; the commissioners for the reduction of the colonies, send another agent to England, 540; the report of the commissioners for trade is not ratified by Cromwell, 541; the commissioners for the reduction of the colonies, in continuation of their opposition to lord Baltimore, prepare and present a paper to Cromwell, *ib*; tenor of the paper, *ib*;—see note LXXXVIII., *appendix*; their agents in England (Bennett and Mathews) enter into an agreement with lord Baltimore, 553; tenor of the agreement, 553, 554, 555.
- Corn, the planting of, regulated by an act of 1638-9, 147; how measured in the early days of the province, 148; acts relating to the planting of corn, and prohibiting its exportation, passed at the assembly of 1640, 176; renewed at the assembly of 1642, 228; pressed for the use of St. Inigoe's fort, 309; the exportation of it from the colony prohibited, 313; an act relating to the planting of corn, passed at the assembly of 1649, 360; scarcity of corn in the colony, and its exportation prohibited, 464.
- Cornwallis, Thomas, accompanies the first expedition to the colony, in the capacity of assistant or councillor to Leonard Calvert, 26; takes a seat in the assembly in that capacity, 49; is appointed to command the first expedition against Clayborne, 34; result of the expedition, 36; the governor appoints him his lieutenant during his absence from the colony, 68; is continued in the council under the new commission, 236; a commission is issued to him to levy and command men, in readiness against the Indians, 228; opposes the exemption of the governor and his servants from military duty, 242; is appointed to conduct an expedition against the Indians, 249; commission issued to him by governor Brent, authorising him to proceed against the Indians, 256, 257; is appointed one of the council by the commission brought out by governor Calvert, 285.
- Council of the province, appointed by the lord proprietary, 26; alterations made by the new commission sent to Leonard Calvert, in the mode of appointing the council, 235; appointment of a new council under the new commission, 236; a new council appointed by the lord proprietary, and a new commission sent them, 337; oath prescribed by the commission, *ib*;—see *commission and oath*, note LXII., *appendix*.
- County courts, an act passed at the session of the assembly 1638-9, to erect a court for the county of St. Mary's, 128; tenor of the act, 129;—see *act*, note XXVII., *appendix*.
- Courts of justice, the first in the province held at St. Mary's, 59; its proceedings, *ib*; the grand jury find two indictments—one against William Clayborne, and the other against Thomas Smith, 61; laws passed at the session of the assembly of 1638-9, to establish courts of justice, 127.
- Court, pretorial, an act passed at the assembly of 1638-9, to erect a pretorial court, 132; tenor of the act, 133.
- Criminal code, a new criminal code established by the assembly of 1642, 226; its provisions, *ib*.
- Cromwell, Oliver, is proclaimed lord protector by governor Stone, 497; his instructions concerning the boundaries between Maryland and Virginia, in which he forbids any force or violence between the two colonies, 531; refers the controversies between lord Baltimore and the commissioners, to certain gentlemen in England, 532; issues an order explanatory of his former order, 533;—see note LXXXVI., *appendix*; tenor of this order, *ib*; he writes to the governor of Virginia, *ib*.

- Customs, an "act for customs," passed at the assembly of 1647, 299; the act enforced, 300.
- Curtis, captain Edmund, is appointed one of the commissioners for reducing the colonies, 433; the commissioners sail with a small fleet for Virginia, 436; captain Curtis arrives in Virginia, and there joins with him the other two commissioners, Bennett and Clayborne, 437; the colony of Virginia surrenders to the commissioners, 438; they go to Maryland, which they reduce to the authority of the parliament, 439 to 443;—see *Proclamation*, note LXXXI., *appendix*.
- Davenant, sir William, appointed governor of Maryland by Charles II., 410; fails to exercise any power under his commission, *ib*; probable causes of this failure, *ib*.
- Debts, mode of recovering debts prescribed by an act of the assembly of 1638–9, 141; provisions of the act, 142.
- Deer skins, a bill laid before the assembly of 1642, to prohibit the exportation of, but postponed, 203.
- Delaware, the Swedes and Dutch employ themselves in making settlements on the Delaware, 112; the Swedes carry on a trade on the river, 205.
- Descents, an act to regulate descents passed at the session of the assembly of 1638–9, 157;—see *act*, note XXXVI., *appendix*.
- Discussions, religious, commence among the colonists, 197.
- Dissolution of the proprietary government, reports circulated in the province relating to a dissolution of the government, 413; cause of these reports, *ib*; in consequence of these reports, some of the inhabitants refuse to send delegates to the assembly, 415.
- Divines, an assemblage of, held at Westminster in England, for the purpose of settling the church government, to which several clergymen of New England are invited, 202; they decline going, *ib*.
- Drunkenness, an act providing for the punishment of, passed at the assembly of 1642, 227; a similar act passed in 1654, 513;—see *note*.
- Durand, Mr., one of the members, and an elder of the Congregational or Independent church of Virginia, settles at Providence, 370; is appointed one of the council, by the commissioners for the reduction of the colonies, after the second reduction of the province, 505; is appointed secretary of the province, *ib*.
- Durford, John, mariner, is excepted from the benefits of the act of oblivion, passed by the assembly of 1650, 406.
- Dutch, nature of the trade carried on by the colonists with the Dutch, on the Hudson, 164; they persevere in their endeavours to establish settlements on the Delaware, 481; they erect a fortification on the present site of New Castle, *ib*; they purchase a tract of land from the natives, *ib*; agreement entered into between the Dutch governor and the New Haven traders, in relation to their settlements on the Delaware, 485; the Dutch governor protests against the intended erection, by the New Haven traders, of a settlement on the Delaware, 486; the expedition destined to fix the settlement, stops at Manhattoes, *ib*; their treatment by the Dutch governor there, 487; he forces them to return to New Haven, *ib*; their settlement at New Castle is captured by the Swedes, 490.
- England, civil war in England, and its supposed influence upon the colonies, 263, 264, 265; affairs of, having relation to the colony, 328 to 332—346 and 347; part supposed to have been taken by the lord proprietary, 331; proceedings in England in 1648, having relation to the colony, 346.
- England, king Charles beheaded, 377; the house of commons declare any one who shall proclaim his son, (the Prince of Wales,) king, to be a traitor, *ib*; he

is proclaimed king by the parliament of Scotland, 378 ; governor Greene issues his proclamation, declaring him king, 380 ; a general pardon for all offences is proclaimed at the same time, "*to further the common rejoicing,*" *ib*;—see *Proclamation*, note LXXIV., *appendix*; proceedings in England relating to the reducement of the colonies in North America, 327 to 433 ; the council of state appoint commissioners for the purpose of reducing the colonies, 433 ; proceedings of these commissioners under the instructions given them, 433 to 443 ; further affairs relating to the colonies, 469 to 472 ; Oliver Cromwell is proclaimed lord protector, 496.

Embargo, proclaimed by governor Calvert in consequence of the hostile state of the island of Kent, 299 ; terms of the embargo, 300 ; renewed for one month, *ib*; *note*.

Enrollment of grants, an act for the, passed at the session of the assembly of 1638-9, 158 ; tenor of this act, *ib*.

Evelyn, captain George, governor Calvert grants a commission to, authorising him to put in force the civil authority of the lord proprietary on Kent island, 43 ; tenor of the commission, 44 ; is invested by his commission as governor of the island, with power to hold a court leet for the trial of civil cases only, 88 ; a subsequent commission grants to the governor of the isle of Kent the power of trying certain criminal cases, 89.

Excise law, the first English excise law passed at the parliament of 1646-7, 301 ; its bearing on the colonies, 302 ;—see *Ordinance*, note LVI., *appendix*.

Fees, officers' fees and public charges, provision made for the payment of, by an act of 1638-9, 145.

Felonies defined, and punishment for them prescribed by the early assemblies, 121 ; benefit of clergy allowed to certain felonies, 123.

Fendall, captain Josias, is appointed governor by the lord proprietary, 534 ;—see *his commission*, note LXXXVII., *appendix*; supposed reasons for this appointment, 535 ; he is arrested for certain rebellious proceedings, and brought before the provincial court, *ib*; action of the court in relation to him, 536 ; governor Fendall goes to England, and Mr. Barber is appointed deputy governor, 546 ; governor Fendall returns to the province, bringing with him lord Baltimore's agreement with the agents of the commissioners for reducing the colonies, a new seal, and instructions for the government of the province, 558 ; he informs captain Fuller of his arrival, and requests an interview with him, 558 ; they meet at Leonard's creek, 559 ; negotiations between them, 560 ; the articles of agreement finally ratified between them, *ib*; tenor of these articles, 560, 561, 562 ; the government of the province is formally resigned to the lord proprietary, by captain Fuller and his council, 562.

Fenwick, Cuthbert, commission issued to, authorising him to seize all vessels illicitly trading with the Indians, 115 ; is appointed commissioner of the county of St. Mary's, in place of Mr. Lewger, deposed by governor Brent, 280 ; his corn taken for the use of the fort at St. Inigoes, 309 ; is returned as a burgess in the place of Mr. Mathews, who had been expelled the assembly, 389 ; his reception by the house, *ib*.

Fleet, captain Henry, is found by Leonard Calvert on his arrival in the Chesapeake, living among the Indians on the Piscattaway, 28 ; he goes with governor Calvert, 29 ; commission issued to, to proceed to Piscattaway, and negotiate a treaty with the Susquehanock Indians, 276 ; instructions concerning the same, 277 ; conditions to be demanded by him, *ib*; his supposed failure to conclude a treaty, 279.

Fugitives, act against, passed at the assembly of 1641, 185 ; tenor of the act, *ib*; re-enacted by the assembly of 1642, 204.

- Foreigners, prohibited by an act of the assembly of 1650, from hunting in the province, 397; cause of this prohibition, *ib*.
- Forfeitures, question as to the right of lords of manors, to forfeitures for treason, by tenants of the manors, decided by the provincial court, 345.
- Fuller, captain William, appointed by the governor and council to command a march against the Eastern Shore Indians, 457; a commission issued to him, 458; his letter to the governor, requesting him to postpone the expedition, which is done, 461; he is appointed to the head of the council by the commissioners for the reduction of the colonies, after the second reduction of the province, 505; message sent by him to governor Stone, on hearing of his having seized the records of the province, 518; the answer of governor Stone to the same, 519; another message is sent by him to governor Stone, while he is marching against the inhabitants of Ann Arundel, 520; governor Stone seizes the messengers, and returns no answer, *ib*; collects his forces and meets governor Stone near Annapolis, 525; a battle is fought between the two armies, *ib*; its results, *ib*;—see *note LXXXVIII., appendix*; issues an order to sequester the estates of those who had opposed them in the late conflict, 529; convenes the assembly, 549; their proceedings, 549 to 552; has an interview with governor Fendall, after his return from England, 559; they enter into articles of agreement, 560, &c.; tenor of these articles, 560, &c.; he surrenders the government of the province to the lord proprietary, 562.
- Game, lord Baltimore claims a right to the royal game of the province, 168; the same right claimed by the state, *ib*.
- Gerard, Thomas, is fined by the assembly of 1642, on petition of the Protestants in the colony, for interfering with their worship, 200; is appointed one of the council by the commission sent out by governor Calvert, 285; special writ issued to him, calling him to the assembly, 286.
- Genalls, John, commission and instructions issued to Mark Pheypo and John Genalls, authorising them to go to the isle of Kent, to enquire concerning the proceedings of William Clayborne, 287.
- Gibbons, Edward, a New England Puritan, appointed one of the council by the lord proprietary, 411; his history, *ib*; he settles in Maryland, 412.
- Goods, uncertain, an act passed at the assembly of 1640, vesting in the lord proprietary a right to all personal property unclaimed, 174.
- Government, an act passed at the assembly of 1640, to provide against sudden accidents to the government, such as the decease of the lord proprietary, 175; re-enacted at the assembly of 1642, 245; expenses of the government provided for by a poll tax, 549.
- Greene, Thomas, is appointed one of the council by the commission brought out by governor Calvert, 285; special writ issued to him, calling him to the assembly, 286; is appointed governor by governor Calvert, during his last illness, 307; his answer to the threats and demands of captain Hill, the former governor, 308;—see *Correspondence between sir William Berkeley, Mr. Green and Mr. Hill, note LVII., appendix*; refuses the demand of Mrs. Margaret Brent, to two votes in the assembly—one for herself, and another as the attorney of governor Calvert, 323; her protest is entered against all the acts of the present assembly, *ib*; the governor enters his protest against that of the members, 324; proclaims a general pardon to all the colonists except Richard Ingle, 327;—see *proclamation, note LX., appendix*; adjourns the provincial court, *ib*; causes of this adjournment, *ib*; is succeeded in his office by governor Stone, 332; causes of the appointment of governor Stone, 233; is first named in the new council, 337; quarrel between governor Greene and Mr. Vaughan, commander of the isle of Kent, 343; the governor deposes Mr. Vaughan, but afterwards reinstates him, 344; he is appointed governor by governor Stone,

- during his absence, in Virginia, 377; issues a proclamation, declaring Charles Stuart to be the true king of England, 380; proclaims a general pardon to all the inhabitants of the province, *ib*;—see *Proclamations, note LXXIV., appendix*; notice taken by him of the expulsion of Mr. Thomas Matthews from the assembly, 387.
- Harvey, sir John, governor of Virginia, visits the settlement at St. Mary's, 30; issues his proclamation, prohibiting the inhabitants of Virginia from trading with the Indians in Maryland, except by license from the lord proprietary, 73; see *proclamation, appendix, note XIII.*
- Hatton, Thomas, sends out new commissions to the governor, and other officers by, 237; is appointed secretary of the province, and one of the council, *ib*,—see *his commission of secretary, note LXIV., appendix*; is removed from his office, and his commission declared null and void by the commissioners appointed to reduce the colonies, 443.
- Hawley, Jerome, one of the council of governor Calvert, 49.
- Heamans, captain, of the ship "Golden Lyon," assists the forces of captain Fuller against governor Stone, and makes the first attack on the latter, 522.
- Hervey, Nicholas, a commission is issued to, authorising him to make war upon the Maquantequats, 164; tenor of the commission, 165.
- Hill, captain Edward, is made governor by the council, during the absence of governor Calvert, in Virginia, 293; preamble to governor Hill's commission, *ib*; calls a meeting of the assembly, which meets and adjourns, 296; resigns his office on the return of governor Calvert, *ib*; applies to sir William Berkeley to assist him in his demands on the government, 308; the answer of governor Greene to his demand, *ib*;—see *correspondence between sir William Berkeley, governor Greene and Mr. Hill, note LVII., appendix.*
- Horses, the exportation of, from the colony, prohibited, 313.
- Holland, an impost granted to the lord proprietary on all tobacco shipped to, 362.
- Hundreds, division of St. Mary's county into, 97; further division of St. Mary's county into hundreds, and appointment of officers for the same, 167.
- Indians, speech of the chief of the Patuxent Indians to Leonard Calvert, 31; the governor of Virginia issues his proclamation, prohibiting the Virginians from trading with the Indians in Maryland, unless licensed by the lord proprietary, 73; nature of the trade carried on by the colonists with them, 76; their fondness for glass beads induces the Virginians to commence the manufacture of that article, 77; shells and other articles used by them for currency, *ib*; importance of the traffic with the Indians supposed to be so great, that agents were authorised by the provincial government, to seize vessels and persons trading without license, 78; the colonists prohibited by law from purchasing their lands, 113; an act for trade with the Indians, passed at an early session of the assembly, being first rejected, but subsequently passed, *ib*; the governor issues a commission, authorising certain persons to arrest all persons found trading with the Indians, 114;—see *note XXIV., appendix*; hostilities between the Indians and the colonists, 161; the Susquehanocks commence hostilities against the colonists, *ib*; cause of their hostility, *ib*; a commission is issued, authorising Nicholas Hervey to make war against the Maquantequats, 165; the friendship of the Patuxent Indians towards the colony, 165; are taken under the protection of the colony, *ib*; the hostility of the Indians seems to have become permanent, 182; proclamation of the governor in relation to the hostility of the Indians, 183; a bill providing for an expedition against the Indians, introduced into, but not passed by the assembly of 1642, 197; orders proclaimed against the Indians on account of their increased hostility, 213; commission issued to Mr. Rigby, authorising him to repair to the Patuxents

- and demand some Indians who had been committing depredations on the colonists, *ib*; he appears to have been unsuccessful, 220; further preparations against the Indians, 228; the situation of the Virginia colony in relation to the Indians, *ib*; governor Calvert solicits the military aid of Virginia, *ib*; letter written by him to the governor of Virginia, 229, 230; the colonists continue their preparations against the Indians, 230; a proclamation is issued by the governor, declaring the "Sesquehanowes, Wicomeses, and Nanticoque" Indians, enemies of the province, 232; the governor issues his proclamation to regulate the intercourse of the colonists with the Indians, 247; the proclamation, *ib*; the governor proposes to send an expedition against the Indians, 248; his proclamation in relation to the same, 249; he concludes a treaty with the Nanticoques, 249; his proclamation in relation thereto, *ib*; measures taken by governor Brent to repel the invasions of the Indians, 256; commissions issued by governor Brent to captain Cornwaleys, authorising him to proceed against the Indians, 256, 257; the governor and council determine to erect a fort on Palmer's island, 259; they obtain fire arms, 273; the Patuxents are taken under the protection of the government, 274; further preparations made by the colonists against the hostilities of the Indians, 286; an expedition under the command of captain John Price, sent against the Wicomick and Nanticoke Indians, 310; an act passed at the assembly of 1649, relating to purchases of land from the Indians, 356; tenor of this act, 357; an act passed by the same assembly, making it felony to entice, or entrap, &c., or sell any *friend* Indian, 358; they are prohibited, by an act of the assembly, from entering the counties of Kent or Ann Arundel, without giving notice, 394; tenor of this act, *ib*; the assembly orders a march against them, 395; act ordering the march, 396; the assembly pass an act to regulate the trade with them, *ib*; provisions of this act, 397; endeavours of the lord proprietary to civilize the Indians, 421; certain persons are authorised by the governor and council to conclude a treaty with the Susquehanocks, 450; a treaty is concluded with them, 451; tenor of the treaty, *ib*;—see *this treaty*, note LXXXIII., *appendix*; the inhabitants of the isle of Kent petition the governor and council to take measures to prevent the increased depredations and hostilities of the Eastern Shore Indians, 455; they order a march against them, 456; in consequence of inclement weather, this march is postponed, 461; hostilities apprehended from the Western Shore Indians, 466; spies are sent among them, 467.
- Impressment, an act passed at the assembly of 1642, authorising the impressment of vessels, men, &c., for the use of the colony, 245.
- Ingle, Richard, his rebellion against the government of the province, 270; proclamation against him, 271; he is arrested for high treason, *ib*; he escapes, 272; joins Clayborne in his successful attempt to depose governor Calvert, 290; excepted out of the proclamation of general pardon to all the colonists, 327;—see *proclamation*, note LX., *appendix*; is excepted from the benefits of the act of oblivion, passed by the assembly of 1650, 406.
- Insolvent law, the first insolvent law passed by the assembly of the province, 147; debts for wine and hot waters not to be satisfied until all others are paid, 147.
- Inspection of tobacco, the first inspection law of the state, passed at the assembly of 1640, under the title of "an act touching tobaccoes," 176;—see *an abridgment of this act*, note XL., *appendix*.
- Ireland, the condition of, about the year 1641, supposed to have some influence upon the affairs of the province, 191; insurrection of the Catholics in Ireland, and massacre of the Protestants, *ib*; causes and intents of this insurrection, 192.
- Justice, nature of the administration of, in the early settlement of the colony,

86; further progress of the administration of justice, 90 to 92; the administration of justice regulated by enactments made at an early session of the Assembly, 117; nature of these enactments, 118; laws passed at an early session of the Assembly for the punishment of particular crimes, 120 to 127; treason defined and its punishment prescribed, 120; what crimes shall be considered felonies and their punishment, 121; benefit of clergy allowed to certain crimes by act of Assembly, 123; the Assembly define enormous offences by enactment, 126; *see act, note XXVI., appendix*, an act passed by the Assembly of the same session to erect a Court of Chancery, 131; tenor of the act, *ib*; an act passed at the same session to create Justices of their Peace, and determine the offences over which they should have jurisdiction, 134; provisions of the act, 135 to 139; *see act, note XXX., appendix*; the administration of justice in the isle of Kent regulated by enactments made at the same session, 139; provisions of the enactments, *ib*; mode of recovering debts prescribed by an act of the same Assembly, 141; an act vesting certain powers in Judges, passed at the Assembly of 1642, 221; an act for the rule of Judicature, passed at the same session, 222; an act for providing for officers, passed at the same session, 223, re-enactment of a former act touching judicature, at the Assembly of 1647, 299.

Justices of the Peace, an act passed at the Assembly of 1638-9, to establish Justices of the Peace, and determine the offences of which they should have cognizance, 134; provisions of the act, 135 to 139; *see act, note XXX., appendix*.

Kent Island, interview between William Clayborne and Governor Calvert in relation to the settlements made by the former on the island, 27; Governor Calvert issues a commission to Capt. George Evelyn, authorising him to put in force the civil authority of the lord proprietary on the island, 43; tenor of the commission, 44; the inhabitants refuse to submit, 62; Governor Calvert resolves to proceed against them in person with an armed force, *ib*; writ issued by the Governor to the deputies of Kent island requiring their attendance at a meeting of the Assembly, 96; the commander of the isle of Kent invested with full judicial powers, in cases not affecting life or member, by an act of one of the early sessions of the Assembly, 117; provision made for the administration of Justice in the isle of Kent, by an enactment of the Assembly, of 1633-9, 139; by this bill the island was erected into a hundred, and a court, called the hundred court of Kent, established, 140; Giles Brent appointed commander of the island of Kent, 166; grant of land made to him on the island, *ib*; hostility of the Indians towards the inhabitants of the isle of Kent, 182, 183; the governor authorises the inhabitants to use martial law against them, 183; Giles Brent appointed commander of the *County of Kent*, and authorised in the same appointment to hold a county court, 246; persons sent to the island to inquire into the doings of William Clayborne, who had repossessed himself of the island and resorted to open military violence, 287; captain William Brainthwayte appointed commander of the island, 288; expedition supposed to have been sent about this time to subdue the island of Kent, 290; Governor Calvert determines to reduce the isle of Kent, 303; the island submits and the government of it is settled, *ib*; he grants a general pardon to all the inhabitants of the island, *ib*; appoints Robert Vaughan Commander, &c. 304; arrangement for the administration of justice, *ib*; Vaughan is authorised to seize the goods of those persons who had fled from the island in order to compel their appearance, 305; Governor Calvert appoints a muster master general for the province, 338; Robert Vaughan is appointed commander, by a commission from the lord proprietary in England, 339; sends laws to the Assembly for their adoption, 340; ordains new conditions of plantation for the col-

ony, 341; their tenor, 342; *see conditions of plantation, note LXIX., appendix*; Mr. Vaughan is deposed from the office of commander by governor Greene, but is afterwards reinstated, 344; changes made in the judiciary of the island by governor Greene, 344; the Indians are prohibited from entering Kent county without giving notice, 394; tenor of the act of Assembly prohibiting them, *ib*; the commanders of the isle of Kent and Ann Arundel authorized to grant land warrants, 409; the isle of Kent remains subordinate to the provincial government, 449; complaints made by the inhabitants to the governor and council against the administration of captain Vaughan, 453; their complaints referred to several persons for examination, 454: the inhabitants petition the governor and council to take some measures against the depredations and hostilities of the Eastern Shore Indians, 455; they order a march against the Indians, 456; in consequence of the inclement weather this march is postponed, 461; the commander of the isle of Kent is ordered by governor Stone to issue writs in the name of the lord proprietary, 477.

Land, an act for the assuring of titles to, passed at the session of the Assembly, of 1638-9, 138: *see note XXXVII., appendix*; an act for enrolling deeds in relation to, passed at the same session, *ib*; tenor of this act, 158; an act concerning taking up land, passed at the Assembly of 1642, 228; the colonists are compelled to take out patents for their land, 250; an act passed at the Assembly of 1648, relating to purchases of lands from the Indians, 356; proclamations made by governor Stone relating to grants of land, 374; new conditions of plantation and grants of land ordained by the lord proprietary, 375; their tenor, *ib*; the commanders of the isle of Kent and Ann Arundel authorised to grant warrants for land, 409; they abuse this privilege by making grants without causing them to be recorded, 461; they are deprived of their authority to make grants of land by governor Stone, 463; proceedings of governor Stone in relation to land patents and writs, 474; his proclamation relating thereto, *ib*; an act concerning rights to land passed at the session of 1654, 514; tenor of the act, 515.

Lamberton, Mr., agent of the United English colonies, treatment experienced by him from the Swedes and Dutch on the Delaware, 262.

Langford, John, is appointed one of the council by the commission brought out by Governor Calvert, 285.

Laws, regulations relative to the passage of, in the early house of Assembly, 104. Legislature of the province, *see Assembly*.

Lewger, John, is sent out by the lord proprietary with his brother to assist him in the discharge of the duties pertaining to his office, 46; he is appointed conservator of the peace in the county of St. Marys, *ib*; takes a seat in the Assembly as one of the council to the governor, 49; he acts as secretary to the province, 51; *see note*; is continued in his offices of Secretary and Councillor under the new commission, 236; during the absence of the governor he proposes to enter into a treaty with the Susquehannock Indians, 275; issues a commission to captain Henry Fleete for that purpose, 276; instructions to Capt. Fleete, 277; conditions of the treaty to be demanded by him 277; governor Brent takes offence at this exercise of power, 280; entry on the records of the colony in relation to these proceedings, *ib*; he deposes Mr. Lewger from his office of secretary and deprives him of all his offices, *ib*; is reappointed secretary and also made one of the council, by the commissions sent out by governor Calvert, 285; is superseded by the appointment of Mr. Hatton as secretary, 333.

Levy, county, first meeting of the inhabitants of St. Mary's county to lay a county levy, 328; *see records of this meeting, note LXI., appendix*.

Literature, deficiency of, among the early colonists of Maryland, 99.

- Lloyd, Mr. Edward, is appointed commander of Ann Arundel county by governor Stone, 407; his commission 408; his message to the Assembly in relation to the sending of delegates, 415; the answer of the lord proprietary, 416; his conduct in relation to grants of land, 461; he is deprived of his authority to make grants, 463; he is appointed one of the council by the commissioners, after a second reduction of the province, 505.
- Manors, lords of, committing treason, to be punished by beheading, 121; apparent intention of lord Baltimore to create an hereditary aristocracy in the persons of the lords of manors, 121, 152; question as to the right of the lords of manors to forfeitures for treason by tenants of the manor, decided in the provincial court, 345.
- Maryland, charter of, 9 to 21; settlement of, by a colony under the charge of Leonard Calvert, 30; tobacco made the medium of currency in the province, by an act of the Assembly, 78; the nature of the administration of justice in the province, 86; the governor vested with the entire judicial power, but required to consult his councillors, *ib*; further progress of the administration of justice in the province, 90 to 92.
- Matthews, Thomas, a burgess in the Assembly of 1650, refuses to take the oath prescribed by the Assembly, 386; his reasons for refusing, *ib*; he is expelled the house, 387; notice taken of his expulsion by Mr. Greene in the upper house, and their proceedings thereon, 388.
- Maquantequats, commission issued to Nicholas Hervey authorising him to make war against the, 164; tenor of the commission, 165.
- Military discipline of the province provided for in an act of the Assembly of 1638-9, 145; *see act, note XXXIII., appendix.*
- Militia, preparations made for training the, caused by the hostile attitude of the Indians, 162; orders of the governor and council directing these preparations, *ib*.
- Mitchell, William, agrees with the lord proprietary in England to transport to the colony a certain number of persons, and receives a grant of a manor in the province, 425; he is appointed one of the council *ib*; his disorderly behaviour in the colony, and removal from the council, 426.
- Measures, of corn in the early days of the province, 148; regulated by an act of the Assembly of 1638-9, 148; *see act, note XXIV., appendix*; an act to regulate measures, passed at the Assembly of 1641, 186; *see act, note XLII., appendix.*
- Nanticoque Indians declared to be enemies of the province in a proclamation issued by governor Calvert, 232; he concludes a treaty with them, 249; his proclamation in relation to the treaty, *ib*; the treaty supposed to have been broken, 261; an expedition under the command of captain John Price sent against the Wicomick and Nanticoke Indians, 310.
- Neale, James, special writ issued to him by governor Calvert calling him to the Assembly, 286.
- New Castle, the Dutch erect a fortification on the present site of, 481.
- New Haven, some English settlers at, lay claim to land on the west side of the Delaware, 206; *see United English Colonies*; their further proceedings, 261; they take umbrage at the encroachments made by the Dutch on their trade on the Delaware, 484; they complain to the commissioners of the United English Colonies, *ib*; an agreement is entered into between them and the Dutch governor, 485; they determine to make a permanent settlement on the Delaware, 486; the Dutch governor protests against this step, *ib*; the expedition to found the settlement stop at Manhattoes on their route to the Delaware, *ib*; some of them are imprisoned by the governor, who refuses to release them until they agree to return to New Haven, 487; they again complain to the

- commissioners, *ib*; their decision, *ib*; they attempt to procure a patent from the government of England for the disputed territory, 488; they gradually relinquish their settlements on the Delaware, 492; they enter into a correspondence with the Swedes concerning their right to the lands on the Delaware, but without any apparent success, *ib*.
- Oath of office, prescribed by the Assembly, taken by governor Calvert and his council, 140; *see form of oaths, note XXXII., appendix*; oath prescribed in governor Stone's commission, 335; *see oath, note LXII., appendix*.
- Oath of allegiance to the king of England prescribed by the Assembly of 1638-9, 110; nature and effect of the oath as prescribed, *ib*; is taken by the governor and council, 112; *see form of oaths, note XXXII., appendix*; oath required to be taken by persons coming into the province who were supposed to have been concerned in Ingle and Clayborne's rebellion, 311; proclamation to enforce the taking this oath, 312; oath of fidelity to the lord proprietary required to be taken by persons obtaining grants of land in the province, 342; the members of the congregational or independent church settled at Annapolis urged to take this oath, 371.
- Oath of fidelity, prescribed to the council by the new commission sent out by the lord proprietary, 337; *see oath, note LXIII., appendix*; an act for taking the oath of fidelity to the lord proprietary, passed at the Assembly of 1650, 403; *see oath, note LXXVII., appendix*; substance of this act, *ib*; penalties prescribed for a refusal to take this oath, 405; *see note LXXVII., appendix*.
- Oblivion, act of, passed by the Assembly of 1650, 406; certain persons excepted from its benefits, *ib*.
- Officers, a bill for providing officers passed at the second Assembly of 1642, re-enactment of the bill, with some variations at the third Assembly of 1642, 244.
- Officers, for the probate of wills and for the purpose of granting administration, appointed by an act of the Assembly of 1638-9, 144; an act for causes testamentary, passed at the Assembly of 1641, 188; tenor of the act, *ib*.
- Officers' fees and public charges, provision for the payment of, made by an act of 1638-9, 145.
- Opechancanough plans a general massacre of the Virginia colonists which he afterwards executes, 161.
- Ozinies, a tribe of Indians on the Eastern Shore of Maryland, commit depredations on the inhabitants of the isle of Kent, 183; proclamation of the governor, authorising hostilities against them, 183.
- People, rights of the people secured by an enactment made at one of the early sessions of the assembly, 115; provisions of the enactment, 116.
- Personal property, the only property taxed in the early periods of the province, 146.
- Peace, justices of the, an act passed at the assembly to establish justices of the peace, 134; the offences over which they had jurisdiction, and their general powers, 135;—*see act, note XXX., appendix*.
- Pardon, proclaimed to all the inhabitants of the isle of Kent, 303; general pardon to all the colonists, except Richard Ingle, 327;—*see proclamation, note LX., appendix*; general pardon proclaimed by governor Stone, on proclaiming Oliver Cromwell lord protector, 498.
- Parliament of England, ordinance passed by parliament in relation to the colonies, 265; substance of the ordinance, 266; ordinance of 1650, and its relation to the province, 413; they pass the famous navigation act, 465; they pass an act against planting tobacco in England, 466; they reject or dismiss the petition of colonel Matthews, agent of the commissioners for reducing the colonies, 470.
- Palmer's island, the governor and council determine to erect a fort on Palmer's island, 259.

- Passes, act touching passes, debate on in the assembly, 238; substance of the act, 239; conduct of the governor in relation to this question, 240; his decision on the law, 241.
- Patents, the colonists are compelled to take out patents for their lands, 250.
- Patuxent Indians, speech of their chief to Leonard Calvert, 31; their friendship towards the colony, 165; are taken under the protection of the colony, *ib*; are again declared to be under the protection of the government, 273.
- Pile, John, appointed one of the council by the lord proprietary, 337.
- Piscattoway, the governor authorised to settle a garrison at Piscattoway, 290.
- Pheypo, Mark, commission and instructions issued to, authorising him to go to the isle of Kent, in company with John Genalles, to inquire about the proceedings of William Clayborne, 287; is authorised to seize corn for the use of St. Inigoe's fort, 309.
- Poll tax, expenses of the government provided for by a, 549.
- Pretorial court, an act passed at the assembly of 1638-9, to establish a pretorial court, 132; tenor of the act, 133.
- Price, captain John, a commission issued to him, authorising him to march against the Nanticoke and Wicomico Indians, 310; his character, 311; is appointed one of the council by the lord proprietary, 337; appointed muster master general, 339;—*see commission, note LXVI., appendix.*
- Probate of wills, officers for the probate of wills, and for granting administration, appointed by an act of the assembly of 1638-9, 144; an act for causes testamentary, passed at the assembly of 1641, 188; tenor of the act, *ib*.
- Protest, Mrs. Margaret Brent enters her protest against all the acts of the assembly of 1648, 323; the members of that assembly protest against the laws passed at the session of 1646-7, *ib*; governor Green enters his counter protest, 324.
- Protestants, petition presented by those residing in the colony, to the assembly of 1642, 199; subject of the petition, 200; it is granted them, *ib*.
- Province, an act for the peopling of, passed at the session of the assembly of 1638-9, 159;—*see act, note XXXVIII., appendix.*
- Providence, now Annapolis.—*See Annapolis.*
- Provincial court, adjourned by governor Greene, for the causes set forth in his proclamation, 327.
- Public charges, provision made for the payment of, by an act of 1638-9, 145; mode of taxation, 146.
- Puritans, laws enacted against the, in Virginia, 198; conduct of the Puritans in that colony, *ib*; they send to Boston to obtain ministers, *ib*; three are sent, but shortly return, *ib*; the assembly of that province prohibit by enactment, any dissenting minister from preaching and propagating the Gospel, *ib*; in virtue of this law, the governor and council of Virginia command all dissenters to leave the province, 199; notwithstanding this, a church is erected, which shortly obtains about one hundred members, *ib*; the congregation being afterwards driven from this church, settle at Annapolis, *ib*.
- Rebellion, Richard Ingle rebels against the authority of the provincial government, 271; governor Brent issues his proclamation against him, *ib*; he is arrested, but escapes, 272; Clayborne repossesses himself of the isle of Kent, 286; aided by Ingle, he seizes on the government of the province, which he retains for nearly two years, 290.
- Recognition, act of, passed by the assembly of 1650, recognising the right and title of the lord proprietary to the province, 398; substance of this act, 399; the first assembly called after the second reduction of the province, pass an act recognising their own powers, 510; tenor of the act, 511; it is confirmed by the next assembly, 549.
- Records of the colony of Maryland, loss of the early, 32;—*note*; provisions made by the lord proprietary to remedy the loss, 419.

- Religion, state of, in the colony in the year 1633, 83; an act concerning religion, passed at the assembly of 1648, 350; tenor of the act, 351;—*see act, note LXXI., appendix*; state of the Roman Catholic religion in the colony, in the year 1654, 492; an act concerning religion, passed at the first session of the assembly, after the second reduction of the province, 512; substance of the act, *ib.*
- Returns to the writs issued by the lord proprietary to convene the assembly, 99.
- Richardson, John, tried before one of the early sessions of the assembly for theft, and sentenced to be whipped, 106.
- Rights of the lord proprietary, secured by an act passed at one of the early sessions of the assembly, 112; enumeration of these rights, 113; of the people secured by an act of the same assembly, 115; provisions of the act, 116.
- Roman Catholics, prohibited from voting for members of the assembly in the province, 505.
- Roman Catholic Church, the provincial government appears to have had no intention of making the Roman Catholic Church the established church of the province, 109.
- Scarborough, Edmond, is authorised by sir William Berkeley, governor of Virginia, to erect a settlement on Palmer's island, at the mouth of the Susquehannah, 417; supposed causes of this assumption of power, 418; governor Stone is ordered by the lord proprietary to seize upon his effects, in case he attempts to settle there, *ib.*
- Schuylkill, the Maryland colonists make settlements on the Schuylkill, 205; the Dutch governor of New York sends an expedition against them, 206.
- Secretary, Jown Lewger appointed secretary under the new commission of Leonard Calvert, 236; his duty under it, *ib.*; governor Brent takes offence at some of his proceedings, during his absence from the colony, and deposes him from his office, 280; Thomas Hatton appointed secretary by the lord proprietary, and sent to the colony with new commissions for the officers, 337.
- Seal of the province, the lord proprietary sends out a new seal, and a commission for the same, 338;—*see commission, note LXV., appendix*; an act passed at the assembly of 1648, for the punishment of such as should counterfeit the seal of the province, 356; the lord proprietary sends out a new seal for the province by governor Fendall, 557.
- Smith, Thomas, accompanies Clayborne in his attack upon the vessels of the lord proprietary, 34; is tried before the assembly of the province and condemned to death, 65.
- St. Inigoes, corn seized for the use of the fort at, 309.
- St. Mary's, town of, formerly the principal town of the tribe called Yoamacoes, is bought by Leonard Calvert, and by him named St. Mary's, 30; instructions given by lord Baltimore in relation to the settlement of, 40; first court held at St. Mary's, and its proceedings, 60; the county of St. Mary's divided into hundreds, 98; an act passed at the session of 1633-9 of the assembly, to erect a court for the county of St. Mary's, 128; tenor of the act, 129;—*see act, note XXVII., appendix*; further division of the county into hundreds, 166; appointment of officers for the same, 167; first meeting of the inhabitants of St. Mary's county to lay a county levy, 328;—*see records of this meeting, note LX., appendix.*
- Stone, William, appointed governor of the province by the lord proprietary, 232; causes of his appointment, 233; strictures on his commission, 334; a new oath prescribed by his commission, 335; substance of the oath, *ib.*; *see commission and oath, note LXII., appendix*; proclamations made by him relating to grants of land, 374; during his absence in Virginia, he appoints Mr. Greene governor, 377; returns and convenes the assembly, 380; his proclamation to that effect, *ib.*; he visits the settlement at Providence, and persuades

them to send burgesses to the assembly, 383; visits Ann Arundel and organises the government of the county, 407; he is said to have assisted the commissioners for the reduction of the colonies, to reduce the colony of Virginia, 438; propositions made to him by the commissioners, part of which he rejects, 440; they ask for his commission, which they detain, and deprive him of his office, 441; Robert Brooke is appointed governor in his place, 442; they declare all the commissions issued by the lord proprietary null and void, 443; *see proclamation, note LXXXI., appendix*; at the request of the inhabitants, he is reinstated as governor, 447; he receives instructions from the lord proprietary in relation to patents for lands, 473; his proclamation in consequence, 474; he is also ordered by the lord proprietary to issue writs in his name, 477; his proclamation in consequence thereof, *ib*; grants a license to Thomas Adams to trade with the Swedes on the Delaware, 479; he proclaims Oliver Cromwell lord protector, and at the same time proclaims a general pardon, 498; he issues a proclamation, in which he charges the commissioners, Bennett and Clayborne, with rebellion against lord Baltimore, 500; the commissioners return to Maryland and make application to governor Stone, who refuses to acknowledge their authority, 503; they go to Patuxent, at which place governor Stone meets them, and again submits to a reduction of the province, 504; his reasons for submission, 505; the government is vested in captain Fuller and a council, 505; in consequence of advice from lord Baltimore, he resumes his governorship, 516; he organizes a military force, and seizes the records, 518; message sent to him by captain Fuller, *ib*; his answer to the same, 519; issues a proclamation to quiet the minds of the people, *ib*; seizes the arms found in the house of the secretary and in the neighbourhood, *ib*; he collects an armed force, and prepares to reduce the inhabitants on the Severn, 520; another message is sent to him by captain Fuller, while on his march towards the Severn, *ib*; he seizes the messengers, and returns no answer, *ib*; he is met by one of the council, *ib*; sends Dr. Luke Barber to Ann Arundel with a proclamation, 521; he arrives with his forces in the harbour of Annapolis, 522; he is fired upon by a ship then at anchor in the harbour, 523; he lands his forces, and is met by captain Fuller with one hundred men, 525; the battle which took place between them, and its result, *ib*; *see note LXXXVIII., appendix*; governor Stone is wounded, taken prisoner and detained, 528.

Sheriff, ordered to be appointed for each county by act of the Assembly of 1638-9, 138; manner of appointing, *ib*.

Soldiers, proceedings in the Assembly of 1648, in relation to the pay of the soldiers brought into the province by governor Calvert, 298; the assembly provide for their pay and sustenance, 321; depositions taken in the Assembly in relation to their pay, 326; *see these depositions, note LIX., appendix*.

Subsidy, of fifteen pounds of tobacco for every inhabitant of the province, voted to lord Baltimore by the Assembly of 1642, 204.

Susquehanocks, commence hostilities against the colonists, 161; causes of their hostility, *ib*; are declared enemies of the province by a proclamation of governor Calvert, 232; they obtain fire arms and are instructed in the use of them by the Swedes, 273; treaty with the Susquehanocks proposed by the secretary Mr. Lewger, 275; commission issued by him to captain Henry Fleete, 276; instructions for his guidance, 277; conditions of the treaty to be made by him, *ib*; the governor and council authorise certain persons to conclude a treaty with them, 450; they conclude a treaty, 451; tenor of the treaty, *ib*; *see this treaty, note LXXXIII., appendix*.

Swedes, nature of the trade carried on by the colonists with the Swedes on the Delaware, 164; their opposition to the settlements of the United English Colonies on the Delaware, 261; instruct the Susquehanocks in the use of fire

- arms, 273; governor Stone grants a license to Thomas Adams to trade with the Swedes, 479; the settlements erected by them on the Delaware, 480; they protest against the settlements made by the Dutch at New Castle, 484; they take by force the Dutch settlement at New Castle, 490; they change its name into fort Casimer, *ib*; they enter into a treaty with the Indians, *ib*.
- Thompson, Richard, is declared an enemy of the province together with William Clayborne, 288.
- Tithing man, appointed for each county by an act of the Assembly of 1638-9, 138; manner of appointing, *ib*.
- Titles to land, an act for the assuring, passed at the session of the Assembly of 1638-9, 158; *see act, note XXXVI., appendix.*
- Tobacco, the Maryland colonists commence to plant tobacco at their earliest settlement, 78; a bill passed by the assembly at one of its earliest sessions, to regulate the payment in tobacco, *ib*;—*see note XVII. in the appendix*; becomes the current medium of trade among the colonists, as well as the staple of exportation, *ib*; is made the current medium of the province of Virginia, 79; part of that raised in Maryland is exported into Virginia, *ib*; James I. prohibits its importation into England, from Spain or any of her colonies, and also the planting of it in England, 80; the Virginia company commence to send their tobacco to Holland, but are prohibited from so doing by a proclamation of James I., *ib*; this prohibition having been eluded, it is renewed in the following year, 81; Charles, the son and successor of James, renews his father's proclamations, and enacts several additional regulations, *ib*; further attempts made by him to regulate the tobacco trade, 82; regulations concerning the planting of tobacco, made at the assembly of 1638-9, 147; duties imposed on tobacco by the same assembly, when exported to any other country except England, Ireland, or Virginia, 149; royal instructions to the governor in relation to, 150; an "act touching tobaccoes," passed at the assembly of 1640, being the first inspection law of the state, 176;—*see an abridgment of this act, note XL., appendix*; regulations concerning tobacco in the colony of Virginia, 178; value of tobacco in the province in the year 1640, 181,—*note*; a subsidy of, voted to lord Baltimore, by the assembly of 1642, 204; a bill authorising a levy of tobacco reported to the assembly of 1642, but not passed, 218; the duties imposed on tobacco by the act of 1638-9, continued by the assembly of 1642, 218; an act determining in what manner tobacco shall be a legal tender, passed by the assembly of 1642, 220; proclamation made by governor Brent, for the purpose of regulating the exportation of tobacco, 270; re-enactment at the assembly of 1647, of the act imposing duties on tobacco, 299; an impost granted to the lord proprietary, on all tobacco shipped to Holland, 362; the parliament of England pass an act, prohibiting the planting of tobacco in England, 466.
- Towne house, directed to be built by the colony, by an act of 1638-9, 157; manner of levying its cost, *ib*; *see act, note XXXV., appendix.*
- Trafford, Colonel Francis, is appointed one of the council by the commission brought out by governor Calvert, 285.
- Trade, nature of the trade carried on by the colonists with the Swedes on the Delaware, &c. 164; proclamation made by the Assembly of 1640, to regulate foreign trade, 172; embarrassed state of the trade of the colony, 269; proclamation issued by governor Brent for the purpose of regulating the same, 269; an impost laid on all tobacco shipped to Holland, 362; an act passed by the Assembly of 1650, to regulate the trade with the Indians, 396; provisions of the act, 397;
- Treason, defined, and its punishment prescribed by an act of Assembly passed at an early session, 120.
- United English colonies, their claim to lands on the west side of the Delaware, 207; the patent under which they claim, supposed to be the grant to sir Ferdi-

- nando Gorges, *ib*; they found their claim also on purchases made from the natives, 208; history of their claim as taken from the proceedings of their commissioners, *ib*; opposition made to their settlement by the Dutch and Swedes, 261; the treatment experienced by their agent, Mr. Lambertson, from the Dutch and Swedes, 262; the New Haven traders on the Delaware, take umbrage at the settlements made by the Dutch on that river, and complain to the commissioners of the United English colonies, 484; the decision of the commissioners on their complaint, *ib*.
- Vaughan, Robert, is sent to the assembly, as a representative from the isle of Kent, 215; makes a motion to divide the assembly into two separate houses, 216; is appointed commander, &c. of the isle of Kent, 304; is again appointed to the same office by a commission from the lord proprietary in England, 339; *see commission, note LXVII., appendix*; quarrel between governor Green and Robert Vaughan, 343; causes of this quarrel, *ib*; governor Greene deposes Mr. Vaughan from his office of commander of the isle of Kent, *ib*; upon Mr. Vaughan's making satisfaction to the governor, he is reinstated in his office, 344; complaints made by the inhabitants of the isle of Kent to the governor and council, against the administration of captain Vaughan, 453; these complaints referred to several persons for examination, 454; his conduct in relation to grants of land, 461; he is deprived of his authority to make grants of land, 463.
- Virginia, the planters of, petition the king in opposition to the charter of lord Baltimore, 24; their success, *ib*; supposed causes of their opposition, 25.
- Warwick, earl of, appointed by parliament, governor in chief and commander general of the colonies, with a council to assist him, 266.
- War, an act concerning the levying of war within the province, passed by the assembly of 1650, 402; provisions of the act, *ib*.
- Water mill, the building of, by the colony, directed by an act of 1638-9, 156; manner in which the cost of the same was to be levied, *ib*; the first built in Massachusetts, 157.
- Weights and measures regulated by an act of 1638-9, 148;—*see act, note XXIV., appendix*.
- Wheat, current price of wheat in the province in the year 1640, 181;—*note*.
- Wicomesse Indians, make war upon the colony, 214; are declared enemies of the province by a proclamation issued by governor Calvert, 232.
- Wicomick Indians, an expedition is sent against the Wicomick and Nanticoke Indians, 310.
- Wine and hot waters, debts for, not to be satisfied, under the first insolvent law of the province, until all others were paid, 147.
- Wolves, payment of all demands for killing wolves, ordered by the assembly of 1657, 550.
- Writs, issued by the proprietary to convene the assembly, form of, 96; writs of summons issued to various individuals, calling them to take their seats in the assembly, 100; the commissioners appointed to reduce the colonies, require that all the writs of the province should be issued in the name of the "keepers of the liberty of England," by authority of parliament, 440; refusal of governor Stone to assent to their demand, 441; he again issues writs in the name of the lord proprietary, 477.
- Yardley, colonel Francis, appointed one of the council, by the commissioners appointed to reduce the colonies, 443; he becomes disaffected, 478; proceedings in court against him, 479.

